

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT
COUNTY OF ANDESON) C.A. NO. 2024CP0400975

HUBERT SMITH)
Plaintiff(s),)
versus)
ANDERSON COUNTY PLANNING)
Defendant(s).)

H E A R I N G

Before The Honorable Lawton R McIntosh

DATE: August 21, 2024
LOCATION: South Carolina Circuit Court
TRANSCRIBED BY: Jane Daniel

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EXHIBITS

(None Marked)

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

1 PROCEEDINGS

2 THE COURT: All right. Smith v. Anderson County
3 Planning Commission. Good morning.

4 MR. CARPENTER: Good morning.

5 MR. DAWIN: Good morning, your Honor.

6 THE COURT: This is an appeal for the commission's
7 decisions; is that right?

8 MR. CARPENTER: Yes. Planning commission.

9 THE COURT: This is your case?

10 MR. CARPENTER: Yes, sir.

11 THE COURT: All right, sir. Are you ready?

12 MR. DAWIN: Yes, your Honor. Todd Dawin, for the
13 commission.

14 MR. CARPENTER: Your Honor, we -- we have a witness
15 that we would like to have testify by remote hook up because
16 she's taken care of her very sick husband.

17 THE COURT: You want to testify by remote? You didn't
18 tell me before, so we didn't make any kind of arrangement for
19 that. I mean, that's a little bit late for you to be asking
20 for me right now.

21 MR. DAWIN: Your Honor, I object to any testimony.
22 This is an appeal. The record is what the record is. There
23 should be no testimony from any party.

24 THE COURT: And it's -- it's not a De novo. So anyway,
25 it is -- it's got to be heard on the record. But in the

1 future, if you need anything like that, you got to call me so
2 we can make arrangements. But I wouldn't have let you have
3 it at this juncture. This -- this is an appeal. Go ahead.
4 (Inaudible)

5 MR. CARPENTER: Your Honor, this is a -- we -- we have
6 six arguments. We filed the summons and complaint appealing
7 the decision for planning commission. And we have the
8 summons and complaint, we have an answer, I guess that's
9 already in the record.

10 First cause of action relates to failure to follow the
11 statutes related to the graves of deceased persons who -- who
12 were enslaved. This property that's at issue is -- was a
13 cattle farm or also probably described as a plantation.
14 There are statutes in South Carolina that govern how the
15 issue of graves need to be treated. There's a common --

16 THE COURT: Which statute are you referring to
17 27-43-310?

18 MR. CARPENTER: 27-43-310 and following. Yes.

19 THE COURT: All right.

20 MR. CARPENTER: All right.

21 THE COURT: Do you have anybody that you represented
22 who qualifies for any of the people who can enter the
23 property under that statute? Family, descendants,
24 genealogists, maintain the grave or the burial ground of the
25 deceased. That seems to me to be the people who would be

1 entitled to ingress, egress, unnoticed to the landowner.

2 MR. CARPENTER: Your Honor, what we have that -- the --
3 the plaintiffs are neighboring landowners.

4 THE COURT: Okay. Is there anything in the statute
5 that provide papers, the landowner have ingress and egress
6 under that statute?

7 MR. CARPENTER: I don't believe so, your Honor. But we
8 also have a common law that tells what -- what should be done
9 with burial grounds.

10 THE COURT: What does the common law provided?

11 MR. CARPENTER: Your Honor, I have some cases that have
12 that -- I can hand out some cases.

13 THE COURT: Sure. Do you have those?

14 MR. DAWIN: I do not, your Honor.

15 MR. CARPENTER: I -- I have -- I have notebooks here
16 that have our --

17 THE COURT: If you provide those accounts, you can file
18 them later.

19 MR. CARPENTER: (Inaudible) the Court.

20 THE COURT: Sure.

21 MR. CARPENTER: These -- these are organized. We --
22 we've got six arguments. These are organized by tabs one
23 through six.

24 THE COURT: Okay. Now I'm treating this, just so we're
25 all on the same page as Mr. Carpenter's appeal from the

1 Planning Commission. So my standard of review is very
2 limited based on the statute -- statutory provisions. Do you
3 agree or disprove that?

4 MR. CARPENTER: I -- I believe it's a -- a hearing on
5 review. Yes.

6 THE COURT: Okay. All right.

7 MR. CARPENTER: The -- the main point of our first
8 cause action is that citizens told the planning commission
9 about the presence of Graves on the property. They handed up
10 an affidavit, a former landowner, and testified that he
11 thought there were graves at four specific places on the
12 property.

13 He -- we would -- after the planning commission
14 hearing, he and other witnesses met with members of the
15 planning commission and expanded on the affidavit explaining
16 where the graves were he thought. Planning commission took
17 position that we haven't received any subjective or objective
18 evidence in relation to the graves --

19 MR. DAWIN: Your Honor, I object to anything that he's
20 testify or -- or argue, it's not in the record. The record's
21 very clear. There's minutes of this meeting. I'll be glad
22 to hand it to the Court.

23 They're on the website. It's public record. Opposing
24 counsel surely has those. That's the only thing, your
25 Honor's -- your Honor's limited to the meetings of -- of the

1 minutes. Not something that may have occurred after a
2 meeting or after a vote.

3 THE COURT: Mr. Carpenter, this is a matter of the
4 record in this case on appeal.

5 MR. CARPENTER: All right. We -- we have the minutes
6 here, your Honor, and we have -- I -- I'll -- I'll make
7 citations to the minutes.

8 THE COURT: Okay.

9 MR. CARPENTER: Okay. The two meetings that we're
10 concerned with are the March 12th meeting and the April 9
11 meeting. But -- but I mentioned the common law. What we
12 have handed up is a case called Frost v. Columbia Clay
13 Company.

14 And this sets the background for how to treat burial
15 grounds or graves. And this says we're the grounds been
16 dedicated to the public for use as a cemetery, the owner
17 cannot afterward --

18 THE COURT: Hang -- hang on. When you're looking down,
19 I can't do -- I'm not familiar with those cases. So look at
20 me and read it so I can understand the question.

21 MR. CARPENTER: Okay. I -- I handed it up to the Court
22 and I highlight --

23 THE COURT: I want you -- you do it so I can understand
24 it right now, because I have not read, so --

25 MR. CARPENTER: Okay.

1 THE COURT: -- I can I understand what you're saying.

2 MR. CARPENTER: Okay. I'm looking at Frost v. Columbia
3 Clay Company.

4 THE COURT: Okay.

5 MR. CARPENTER: Page 2 of the opinion, the highlighted
6 portion on this -- the first column. "Where ground has been
7 dedicated to public for use as a cemetery, the owner cannot
8 afterward resume possession or remove the bodies entered
9 therein."

10 And then it says, "The most refined and sacred
11 sentiments of humanity cluster around graves of departed
12 loved ones. And when those sentiments have become associated
13 and connected with a particular spot of ground, the
14 invitation or by invitation of consent of the owner, we shall
15 not for secular purposes disturbed." And that's what's going
16 on here. We have a disturbance.

17 THE COURT: How were the properties -- were these
18 graves dedicated? Was this a dedicated graveyard?

19 MR. CARPENTER: It was -- it was a -- according to the
20 affidavit, it was a place where they buried the enslaved
21 persons. It was a particular section of that.

22 THE COURT: Was -- was it marked or dedicated somehow
23 or was it just -- were they buried haphazardly? I -- I just
24 don't know.

25 MR. CARPENTER: Well, the -- if we'd been -- if we'd

1 been permitted to put evidence on, we would've had a
2 historian testify about how that happened. But if I could
3 proffer that it would've been that -- that when they had a
4 plantation like this, they would bury the bodies of the
5 deceased persons in a particular area, usually away from the
6 arable land. Near streams or rivers, near other buildings so
7 as to not interfere with the farming operations of the
8 property.

9 THE COURT: I thought you told me the outset that there
10 was a number of four graves or whatever that were
11 specifically there.

12 MR. CARPENTER: That there was a place --

13 THE COURT: That they pointed out to the planning
14 commission as actually being there. Not suspected that it
15 might be there. Is -- is it something that they know to be
16 there or they suspect could be.

17 MR. CARPENTER: There is -- is -- and -- and we have
18 the affidavit that was submitted to the planning commission,
19 and it said that this man walked with his father, and his
20 father pointed out areas where the slave graves were. And he
21 said they were in four particular areas on the property. He
22 put that in his affidavit. We handed that affidavit up to
23 the planning commission. I think they delegated to the staff
24 --

25 THE COURT: And this gentleman was who?

1 MR. CARPENTER: Mr. Rhodes.

2 THE COURT: I mean, the reason I'm asking, under the
3 statute that I looked up, there's certain people that you
4 have at grave size have access to the property. Is --

5 MR. CARPENTER: He's a former owner.

6 THE COURT: Is he a family member or a descendant?

7 MR. CARPENTER: I -- I think -- I think the graves were
8 those of enslaved persons. He would've been a descendant of
9 a prior owner of the property.

10 THE COURT: Okay.

11 MR. CARPENTER: I don't know that he's a descendant of
12 the persons buried there.

13 THE COURT: Okay.

14 MR. CARPENTER: But -- but this case goes on to say
15 that just through inaction doesn't create a situation of
16 abandonment. Those continue to be burial grounds and they
17 have to be preserved and protected. That's -- that's what --
18 that's what I read the Frost case to stand for. And this is
19 from 1924.

20 A similar effect is the case called Kelly v. Tyner,
21 which I've also handed up to the Court from South Carolina in
22 1912. Page 4 of the opinion, "if one has been permitted to
23 buried his dead in a cemetery by the express or implied
24 consent of those in proper control of it, he acquires such
25 possession in the spot of ground in which the bodies are

1 buried, as will entitled him to maintain an act of trespass,
2 where a clause on (inaudible) against the owners of the fee
3 or strangers who without his consent negligently or wantingly
4 disturb it.

5 One who dedicated public land to public for burial
6 purposes, dedication, having been accepted, may be prohibited
7 from defacing or peddling with the grave thereon at the suit
8 of one, having relatives or friends buried there."

9 The complainants in that case were residents of the
10 neighborhood and they had friends buried in the burying
11 ground and with us interested in preserving for themselves
12 and the public, the varying ground as it had been
13 established. And we are the opinion that they had the right
14 to sue on behalf of themselves and others with a like
15 interest.

16 The plaintiffs have a general interest as citizens of
17 the community in which the cemetery is located and have a
18 special and particular interest because of their parents,
19 children, grandparents buried there.

20 So it's not just the direct descendants of those who
21 are buried there, but it's others in the community who have
22 interest in preserving the burial ground that were given
23 standing to -- to litigate the disturbance of those graves.
24 In the case of Kelly v. Tyner which we've handed up to the
25 Court.

1 THE COURT: Well, let's go back to the planning
2 commission requirements. Is there anything in the planning
3 commission requirements that if there is a suspected grave
4 site what has to be done? I'm not familiar with it and I'm
5 just asking.

6 MR. CARPENTER: Well, we're contending that based on
7 the statutes that -- that disallows certain things from
8 happening --

9 THE COURT: Which statute are you walking about?

10 MR. CARPENTER: Well, the ones we mentioned in the
11 first place --

12 THE COURT: Sir.

13 MR. CARPENTER: The ones we mentioned in the first
14 place, and you questioned my --

15 THE COURT: You talking about 27-43-310.

16 MR. CARPENTER: Yes.

17 THE COURT: In that it says the following people that
18 would like to ingress and egress, and that is family members
19 or descendants, applied owners, persons who will often
20 participate in a burial, genealogists engaging in research
21 with permission of the owner or family members or
22 descendants. I mean that seems to be the class of people who
23 were covered by that statute.

24 MR. CARPENTER: Okay. But the common law, I think is
25 broader according to this case.

1 THE COURT: Well, the statute -- I mean, the statute is
2 the statute, you know. And the legislature makes a list was
3 inclusio -- exclusio, whatever that the Latin term is. If
4 they included means that they didn't -- they specifically
5 excluded it.

6 MR. CARPENTER: Well, that, that's talking about a
7 right to go on there and do certain understand it. But this
8 is talking about preserving the burial grounds from
9 disturbance. And I think think that common law --

10 THE COURT: So going back to my question, if I'm
11 bringing a development before the planning commission ask for
12 it to be approved. And somebody says they're suspected
13 cemetery plots, there. What do the planning commission's
14 rules or regulations require in that event? Anything? Or
15 does it just go back to the statute?

16 MR. CARPENTER: I -- I think it would require
17 reasonable judgment, and I think that would include a duty to
18 look into it.

19 THE COURT: Does the statute say that or there, do the
20 rules or regulations say that, or is it just something you
21 think would be a common, sensible approach?

22 MR. CARPENTER: I don't know a specific statutory duty.

23 THE COURT: I'm sorry.

24 MR. CARPENTER: I said I don't know of a specific
25 statutory duty related to graves that applies specifically to

1 the planning commission.

2 THE COURT: Okay.

3 MR. CARPENTER: I think they've got a certain amount of
4 judgment and discretion, but we -- the point is we presented
5 this affidavit to the planning commission.

6 THE COURT: And -- and again, I have not looked at it,
7 Mr. Carpenter, that affidavit I will look at, but it says
8 specifically I was a former owner or my family was or
9 descendant of that, and this is where the graves actually
10 were. Is that pretty much to the effect of what he was
11 saying or this person was saying?

12 MR. CARPENTER: Let -- let me find the affidavit, your
13 Honor.

14 THE COURT: Okay. What tab are you under? You said
15 you might -- things you handed up to me

16 MR. CARPENTER: I'm -- I'm still on number one.

17 THE COURT: Okay.

18 MR. CARPENTER: Here's the affidavit of Kenneth Eugene.

19 THE COURT: You said in your submissions to me. If its
20 not, would you hand it up, please?

21 MR. CARPENTER: Yes -- yes, your Honor. That's what I
22 -- you -- you can have these.

23 THE COURT: Yes. Yes. (Inaudible).

24 MR. DAWIN: It's right behind the case.

25 MR. CARPENTER: Okay. Opposing counsel tells me it's

1 right behind the case under tab one, and it is. I just -- I
2 just --

3 MR. DAWIN: It's under tab one, your Honor, right after
4 the case.

5 MR. CARPENTER: Right -- right after the case. The
6 cases

7 THE COURT: Tell you what, give it to my law clerk
8 before you leave, make sure that I have it. Okay. I'm not
9 seeing it. Okay. I just didn't -- I -- you just handed me
10 the book, so I haven't read anything yet. Okay. Sir?

11 MR. CARPENTER: This is the original here.

12 THE COURT: Okay. Would you make a copy of that?
13 She'll give you your original back.

14 MR. CARPENTER: All right. All right. And you want me
15 to go through the affidavit?

16 THE COURT: Go ahead. Sure. I'll get back to sir.

17 MR. CARPENTER: Paragraph 3. Mr. Rhodes testifies and
18 he's an old man. "And in the late '30s, my father John Lee
19 Rhodes, who was a deputy police officer in Anderson, acquired
20 property including a property west of on Highway 187,
21 adjoining Fants Grove Circle," which is the property we're
22 talking about here, then known as Rivoli Plantation.

23 "I was around 10 years old when the property was
24 acquired, lived there with my father and mother and some of
25 my siblings. The portion of the property currently owned by

1 AnMed was in my family until 1982 when it was sold to
2 Motorola. When my father bought the property in the late
3 '30s, there was a black man who worked on the property who
4 were descendants of the slaves.

5 At that time, the property had a plantation home called
6 Ridley and a barn at the top of the hill on the property. We
7 had cattle and cotton on the property. There were three
8 wooden buildings near the barn, some pecan trees. My father
9 told me the slaves had lived in the buildings. In the '40s
10 my father also told me there were slave graves on the
11 property.

12 When I walked the property, I could see an area where
13 the ground had sunk in. When I asked my father what it was,
14 he told me slaves were buried in the shallow graves. I don't
15 know exactly where all the graves were.

16 Some were located on the hill right behind the barn.
17 There were some graves near a spring that started on a short
18 branch, not too far from the roads." And then he has the
19 affirmation and so on. So there -- there are four specific
20 places where the graves were according to the former owner of
21 the property.

22 And when we presented that to the commission we
23 suggested that the commission had -- because of the
24 seriousness of of desecrating graves, the commission had a
25 duty to at least look into that. And the commission --

1 THE COURT: Say that again, please.

2 MR. CARPENTER: We -- we submit that when we told the
3 commission about that, because of the seriousness of the
4 graves and the -- and the comparable cases that talk about
5 the seriousness of burial grounds, that the commission had a
6 duty to at least look into that, to see if there were graves
7 there to prevent the desecration of the graves. And they
8 didn't do that.

9 They -- they brushed it off and they said, in the
10 minutes, we don't have any subjective or objective evidence
11 that there might be graves on the property. And we contend
12 this affidavit is evidence and it -- and it should have
13 created a duty in the depart of the planning commission to at
14 least look into it.

15 And then Mr. -- Mr. Rhodes met with some officials
16 afterwards, which I know I'm going to get an objection on.
17 But -- and -- and further explained his affidavit and we --
18 we gave him this evidence, but they refused to consider it.

19 And we think that was a violation of their duty as
20 planning commissioners to protect the sanctity of burial
21 grounds on property that's going to be bulldozed and just
22 turned into a subdivision.

23 So that's -- we -- we think based on the -- the case
24 law that we've provided here, that it continues to be a
25 burial ground and there are certain requirements for

1 preservation burial grounds that they had a duty to at least
2 look into it and they didn't even look into it. Your Honor,
3 if we had been permitted, we would've offered an expert to
4 talk about the customs and -- and --

5 THE COURT: Say that again.

6 MR. CARPENTER: If we had been permitted, we would've
7 offered --

8 THE COURT: You know, the standard of review is the
9 standard review. I didn't create it. It's created by
10 statute. So you're not allowed to create new evidence up
11 here, you know that Mr. Carpenter.

12 MR. CARPENTER: All right. So (inaudible). Pretty
13 much.

14 MR. DAWIN: Your Honor, do you want to address these
15 one by one or me wait till the end, address all six.

16 THE COURT: Your objection. Whatever way you want to
17 have.

18 MR. DAWIN: I mean, I think it would be -- I think it'd
19 be easier for the Court to consider one at a time. So if
20 he's done with his argument --

21 THE COURT: Its your objection, if you want objection,
22 you should object.

23 MR. DAWIN: Yes, sir. So I -- I -- I'd like to address
24 number one and then we can go two, three, four, five, six.

25 THE COURT: All right.

1 MR. DAWIN: Instead of just waiting until the end, if
2 that's okay with you Honor.

3 THE COURT: All right.

4 MR. DAWIN: Okay. If -- if I may approach, your Honor.
5 That's the agenda, that's the amendments. Your Honor, if I
6 may approach, I've got the agenda that was for the planning
7 commission in April as well as the minutes for your Honor.

8 And your Honor, I -- I don't want to inundate you with
9 a lot of materials, but the, the timeline of this is this
10 project was considered in a -- in a similar form at the
11 December planning commission meeting. It was denied at that
12 meeting.

13 The developer, because of the denial sued, brought in a
14 bill. We had to prove they requested pre-suit mediation,
15 which was not requested in this case. We had that pre-suit
16 mediation in February. Some things were discussed and what
17 it might be able new to -- to tweak their project, they did.
18 So it was considered again in March.

19 It was again denied in March, same thing. They
20 listened to what the concerns were from the citizens and the
21 commission. Brought it back in April. And at the April
22 meeting it was approved.

23 That's why we're here today because now the citizens
24 who don't want the development have brought this appeal. So
25 I've got the minutes from December and March if you'd like to

1 see them, your Honor, because this burial ground was
2 mentioned in December. It was mentioned in March.

3 In the minutes you'll see from this April hearing, the
4 attorney for the developer, Carter Massingill specifically
5 starts his presentation with, "Hey, we've heard there's some
6 allegations that there may be a slave burial site."

7 And your Honor, if you look at that two-page affidavit,
8 it's just -- it's -- it's -- for hearsay. It's, my father
9 told me this might happen. There may be graves here. That
10 was submitted, there was discussion. We'll see that --

11 THE COURT: Well, let me ask you this.

12 MR. DAWIN: Yes, sir.

13 THE COURT: When it was brought up, even though it may
14 be hearsay, whatever, I mean anything at all done to attempt
15 to verify whether that was accurate or not accurate as to
16 whether -- no, (inaudible) --

17 MR. DAWIN: That's right.

18 THE COURT: -- as to whether or not they were grades
19 existed on this property. Did anything get done?

20 MR. DAWIN: Nothing -- well, the commission's
21 quasi-judicial, your Honor, I don't think this Court would've
22 any obligation to go back for anything that's not presented.

23 THE COURT: Did the commission require the proposed
24 developer to do anything to verify whether or not there were
25 actually graves on the property or not?

1 MR. DAWIN: The --

2 THE COURT: Did anybody require anything to be done?

3 MR. DAWIN: No, the developer actually said they wanted
4 that information. That's what I was getting to in a minute,
5 your Honor. They said they asked anyone that had information
6 to bring it with them because they wanted to know before they
7 started developing. But Your Honor, there's a statute --

8 THE COURT: I'll go back to my question to you.

9 MR. DAWIN: Yes, sir.

10 THE COURT: When this was brought up to the commission
11 and developer said this, whatever you wanted do, what, if
12 anything, did the commission require of the developer with
13 regard to these graves, anything at all?

14 MR. DAWIN: No, your Honor. Under 27-43-310 if the --
15 if graves are found during the development, there's --
16 there's a mechanism to deal with that. And that's what the
17 developer said he would do. That's why they said, we want to
18 know because we get halfway through this development and
19 discover, then we've got to go through the steps of 27-43-310
20 to try to handle what we--

21 THE COURT: Even by the nature of these type of graves,
22 you're not going to find any because they were not marked.
23 And so unless you do something to verify whether or not
24 they're there, then your decision not to seems somewhat off
25 very capricious to me.

1 MR. DAWIN: Well, your Honor, all we had was this
2 affidavit, which is arbitrary itself. It says they may be
3 somewhere. My dad told me in the '30s and '40s that they
4 made be somewhere. So I -- I mean by the same token, we --
5 we had that information, the planning commission considered
6 this affidavit --

7 THE COURT: But according what you told me that -- that
8 planning commission did absolutely nothing to acquire
9 anything to verify that, nothing.

10 MR. DAWIN: I don't know what you could do to verify
11 that, your Honor.

12 THE COURT: Sit down.

13 MR. DAWIN: Just honestly, I don't know what you could
14 have done --

15 THE COURT: I disagree with you on that.

16 MR. DAWIN: I understand that, your Honor.

17 THE COURT: The gentleman out there, let him walk
18 through or look, or have some other -- just a state
19 archeological -- the Office of State archeologist, they could
20 help to do that.

21 MR. DAWIN: Well --

22 THE COURT: Things you can do to verify whether or not
23 it's there, but just to say we're not going to do anything
24 seems to be arbitrary capricious.

25 MR. DAWIN: Your Honor, again, it had been brought up

1 by the members of the public in December and in March and no
2 further evidence had been presented on that end. Mr.
3 Carpenter now says he had an expert. They -- they could have
4 had that same person at the planning commission meeting. The
5 planning commission takes what it gets.

6 It's not a congressional subcommittee. It can't
7 subpoena witnesses. It can't have folks testify. They get a
8 project and they -- they listen to the developer, they listen
9 to the concerned citizens and then they make that decision
10 based on what was presented to them at that time.

11 And all they have is this two-page affidavit that
12 again, is -- is just to me, your Honor, hearsay on hearsay.
13 But that -- that's my argument to address that it was
14 considered and it was rejected. It was considered in
15 December and in March. And again, I'll be glad to hand those
16 minutes up to you as well, your Honor, if you want my --

17 THE COURT: No, if you tell me there and --

18 MR. DAWIN: Yes, your Honor.

19 THE COURT: I -- hey, gentlemen, I'm going to read
20 through all this before I issue a decision. All right. Mr.
21 Carpenter, next argument.

22 MR. CARPENTER: Could I address the question the Court
23 raised about what could have been done?

24 THE COURT: Sure.

25 MR. CARPENTER: Okay. The issue came up in the course

1 of this conversation at -- at the hearing about ground --
2 about LiDAR and -- and LiDAR could have been done. And LiDAR
3 is getting a drone and -- and going over the property and
4 doing a topographical study of the property, looking for the
5 indentations and so on.

6 The second thing that could have been done is called
7 ground penetrating radar, which would've disclosed the
8 presence of these graves. We believe neither of those was
9 done. And according to statements made by the developer and
10 planning commission, they thought it was just too expensive.
11 But there's no indication they looked into how expensive it
12 was going to be. We have --

13 THE COURT: Let ask you this. In some -- in some way I
14 don't necessarily disagree with county's counsel that -- I
15 mean county's attorney, that this is somewhat far removed to
16 try to prove that there is some kind of grave out there. But
17 you represent neighbors, right?

18 MR. CARPENTER: Yes.

19 THE COURT: And the neighbors don't want this
20 development there,

21 MR. CARPENTER: Right?

22 THE COURT: And so it would seem to me that raising the
23 issue of graves to stop this development could be in their
24 interest because they don't want this development there,
25 whether or not there are grave there or not. And -- and so

1 would your clients be willing to pay the cost to do this
2 investigation in the event that it is ordered?

3 MR. CARPENTER: I can certainly raise that question.

4 THE COURT: I mean, could you -- you're -- you are
5 trying to place it on some developer by some -- that had
6 somebody said some time ago, this may or may not have been
7 there. It sounds to me a little bit, quite frankly, is if
8 I'm the next door neighbor, I don't want this, so I raise
9 graves up.

10 This can stop it in its tracks. So if they really
11 believe the graves out there, really believe that something
12 needs to be protected, which if they are, they should be.
13 Are they willing to incur the cost to make sure there are?

14 MR. CARPENTER: If you give me a minute. I'll find
15 out.

16 THE COURT: Sure. Just take a couple minutes. I got
17 to get you a cup of coffee. I'll be right back. Okay.

18 (RECESS TAKEN)

19 THE COURT: Were back on the record. All right, sir.

20 MR. CARPENTER: (Inaudible) we continue to believe, we
21 would consider doing the payment of it. We think it's an
22 obligation of the developer, just like if they had discovered
23 some kind of hazardous part on the property or some kind of
24 investigation before they could develop it.

25 It -- it is an impediment to their development and we

1 think the expenses are rightly on the developer to -- to look
2 for the presence of these graves. When we told them --

3 THE COURT: Back to what you said earlier, you said
4 they are willing to pay or not willing to pay it?

5 MR. CARPENTER: Well, they're willing to consider it.

6 THE COURT: Consider it? Oh, that's just telling me
7 nothing. All right. Go ahead.

8 MR. CARPENTER: But -- but we -- we -- like I said, we
9 continue to believe this is an obligation of developer. Just
10 like if they -- if they were put on notice of some kind of
11 hazardous materials on the property, they would have a duty
12 to -- to look into it and -- and to take care of it.

13 Now the Court says, we're just trying to stop the
14 thing. Part of it has been approved already, so that's
15 beyond stopping. Phase 1 has been approved and we'll get
16 more into that as we go through the six arguments we have.
17 So that's -- that's already done. So were not trying to stop
18 that, but we are concerned about the presence of graves from
19 a humanitarian and neighborly consideration.

20 THE COURT: All right.

21 MR. CARPENTER: But we think that LiDAR can be done
22 very fairly economically and ground penetrating radar, we
23 think can be done over these areas where he pointed out that
24 graves likely were.

25 We -- I -- we think that can be done fairly

1 inexpensively compared to the value of this property.
2 There's 175 acres of residential real estate development,
3 which back in 2007 sold for two and a half million dollars.

4 We think that it would be worth two or three times that
5 now. So the cost of the LiDAR and ground penetrated radar
6 would be minuscule compared to value of property. And we
7 think it's the burden of the developer. But we're willing to
8 consider if the Court doesn't, again.

9 THE COURT: Willing to consider. It just tells me I'm
10 not going to do that down the road. So if he's willing, he's
11 willing, if he is not, he's not.

12 MR. CARPENTER: Okay.

13 THE COURT: Yes, sir. You can say right now, that's
14 fine. If he doesn't, he won't.

15 MR. CARPENTER: He will.

16 THE COURT: All right. Go ahead with your argument.

17 MR. CARPENTER: I think that included my rebuttal on
18 that point.

19 THE COURT: All right, sir. Next ground, please.

20 MR. CARPENTER: Okay. Second cause of action is the
21 failure to give proper notice under FOIA. We've submitted to
22 the Court the statutes to tab 2. The -- that the -- the
23 commission is a public body under FOIA meetings of public
24 meetings under FOIA and under 30-4-80(a), FOIA requires the
25 body to publish an agenda prior to the public meeting.

1 They -- they sent out -- we -- we attached in the notes
2 a copy of the notice that went out to the neighbors, the
3 landowners around that area. And in the notice they said
4 they were going to consider one part of this project.

5 THE COURT: Where -- is that in the submissions?

6 MR. CARPENTER: Yes, sir.

7 THE COURT: Okay. Where is that?

8 MR. CARPENTER: It is -- it is at -- right behind tab
9 2. I think it's the first thing behind tab 2.

10 THE COURT: Okay.

11 MR. CARPENTER: Second paragraph says that they're
12 going to consider phase 2. Phase 1 has already been
13 approved. Phase 1 is -- is nearing the one year anniversary
14 by which they have to take certain actions and they're --
15 they're about to run out of time on that. With this notice,
16 and they notified the public they were going to consider
17 phase 2 at the April nine meeting of the planning commission.

18 Well, when they got there the -- and we have the -- the
19 minutes of the planning commission. They did what we have
20 read they have done multiple times. And I -- I don't if the
21 Court has the April minutes or just the -- the March meeting
22 minutes.

23 MR. DAWIN: I don't know what I have and don't have
24 (inaudible).

25 THE COURT: Your Honor, I have that -- the April

1 minutes because that's what this is.

2 MR. CARPENTER: Okay. Okay. The April 9 notes.

3 THE COURT: Does this begin with the staff report
4 preliminary subdivision?

5 MR. DAWIN: It does, your Honor. And if you want to go
6 to page 12, that's where this specific project starts being
7 discussed.

8 MR. CARPENTER: Well, I want to talk about page 2.

9 MR. DAWIN: Okay. That's fine. First page of the
10 minutes.

11 MR. CARPENTER: First page of the minutes.

12 MR. DAWIN: I may not have it.

13 THE COURT: Go ahead.

14 MR. CARPENTER: Page 2, they opened the minutes -- they
15 opened the meeting and then the chairman says, at this time,
16 commissioners, I would like to invoke a motion for approval
17 of the agenda as printed. And then they had a motion and a
18 second and they had no discussion. They all voted to approve
19 it.

20 What this appears to me to be is they publish an agenda
21 and they send it out and notify everybody and they get to the
22 meeting and they want to do something else. So they have a
23 new printed agenda and they vote to adopt the agenda as
24 printed. Now, there's a statute that governs when they can
25 do that, and it requires -- and then we -- we've given the

1 statute to the Court 30-4-80 is in our materials here.

2 And it's paragraph A toward the bottom of the page,
3 toward the bottom of the paragraph. "Once an agenda for a
4 regular call, special or rescheduled meeting is posted,
5 pursuant to this subsection, no items may be added to the
6 agenda without an additional 24 hours' notice to the public,
7 which must be made in the same manner as the original
8 posting."

9 Here's the exception. "After the meeting begins, an
10 item upon which action can be taken only may be added to the
11 agenda by a two thirds vote of the members president voting.
12 However, if the item is one upon which final action can be
13 taken at the meeting, or if the item is one in which there
14 has not been, and will not be an opportunity for public
15 comment with prior public notice given in accordance with
16 this section.

17 It only may be added to the agenda by a two thirds vote
18 of the members present in voting and upon a finding by the
19 body that an emergency or an exigent circumstance exists. If
20 the item is not added to the agenda, nothing herein relieves
21 the public body of any notice requirement with regard to any
22 statutory required for public hearing."

23 What -- what they appear to be doing, and -- and it
24 appears they've done this on multiple occasions, is they get
25 to the meeting and they have a motion to adopt the agenda as

1 printed, which I understand to be different from the agenda
2 as previously published. But here --

3 THE COURT: Do you have a copy of the agenda as
4 published and as amended at the hearing?

5 MR. CARPENTER: No. But what we have is this notice
6 that went out that said we're going to consider --

7 THE COURT: That's what I'm asking for.

8 MR. CARPENTER: -- phase 2, what is consider phase 2 in
9 the hearing, they consider a combination of phase 1 and phase
10 2, where they -- these -- these developments require a
11 certain percentage of the lots to face out into open green
12 space.

13 Phase 1 met that requirement. Phase 2 originally did
14 not. And phase 1 was getting ready to -- the -- the
15 permission on phase 1 was getting ready to expire. So what
16 -- and -- and phase 2 didn't meet that open meeting, oh, open
17 green space requirement. But they came up with the idea of
18 combining phase 1 and phase 2 so that they would reach that
19 percentage required.

20 And it's this combination that was voted on in the
21 April 9 meeting when they had said they had put out the
22 notice to the -- to the landowners and said, we're only going
23 to -- we're only going to be considering phase 2, then they
24 changed it.

25 THE COURT: Let me ask you this, if they've already

1 approved phase 1 and the consideration is for phase 2, how is
2 that anywhere different from what is sent to the public? The
3 notice of the hearing?

4 MR. CARPENTER: Phase 2, the -- the notice to the
5 public was said, we're going to consider phase 2, but phase 2
6 didn't meet the requirements for green space. Oh, lots have
7 -- a certain percentage of the lots have to face to green
8 space.

9 Phase 2 in itself didn't meet that. But they decided
10 that if you combine phase 1 and phase 2, you start the
11 timetable again, which is about to expire. And you've got
12 the -- the combined phase 1 and phase 2, which has enough
13 facing the green space to meet the requirement, whereas phase
14 2 by itself did not.

15 So when they, when they did the combination without
16 notice to the public, then that was a violation of the notice
17 required by posting the agenda ahead of time because they
18 changed it at the meeting and -- and passed it without having
19 given the public prior notice that that's what was going to
20 go on.

21 THE COURT: All right, sir.

22 MR. CARPENTER: The Court -- if the Court will look at
23 page 24 of the minutes from the April 9, meeting.

24 THE COURT: Where's that?

25 MR. CARPENTER: I believe it was handed up to you.

1 MR. DAWIN: Yes. I handed it up this morning, your
2 Honor.

3 THE COURT: Page 24. All right, sir.

4 MR. CARPENTER: All right. If -- if you look at toward
5 three quarters of the way down, Mr. Hicks is one of the --

6 THE COURT: What bind number?

7 MR. CARPENTER: 32.

8 THE COURT: All right.

9 MR. CARPENTER: Toward the end of the line. "For
10 conservation subdivisions, at least 50 percent of the lot
11 shall directly front open spaces or face open spaces from
12 across the subdivision street" and so on. Mr. Hicks, who is
13 one of the plaintiffs is -- is talking to the commission
14 saying, I only see 24 percent for phase 2 showing directly in
15 front of the open spaces.

16 And he says at the bottom of the page, that last --
17 last paragraph at the bottom of the page, we're supposed to
18 only be looking at phase 2 for approval. And then he asked
19 if you -- at the top of page 25, asking you not to grant a
20 continuance for phase 1.

21 So anyway, they -- they ended up granting the -- the
22 approval of this combined phase 1 and phase 2. Phase 1 had
23 already been approved. And this combination by their map
24 enabled them to meet that percentage requirement of looking
25 out into open space. But it was -- it was the lack of notice

1 that we're objecting to in our second cause of action here.

2 All right.

3 MR. DAWIN: Thank you, your Honor. May it please the
4 Court. What counsel has presented to you are postcards that
5 are sent out to the owners of any property adjoining a
6 proposed preliminary -- preliminary plat subdivision is going
7 to be before the board that night.

8 So if there's 10 projects, then each landowner within
9 that radius only gets a postcard saying this project may
10 affect yours, not any of the other districts. So let's say
11 we've got a project in -- in Districts 1 through 6, it only
12 goes there.

13 This is not the agenda. This is just a postcard saying
14 that a -- a project on the agenda might be one of one, it
15 might be one of 10, is going to be considered tonight. The
16 -- the agenda is on the planning commission's website. And
17 this theory at least, normally, at least a week prior,
18 because your Honor, before I drive response to attend the
19 meetings for the commission.

20 THE COURT: Say that again.

21 MR. DAWIN: Before I drive from response break to
22 attend the -- the commission meetings I actually pulled the
23 agenda from that. And on the agenda it clearly states that
24 phases one and two are being considered as what I passed up
25 to, your Honor, the staff report for this, I -- I just put

1 for this one project at the very top.

2 So it's the -- the small packet of what I handed up, your
3 Honor.

4 And again, this was all, this is all on the website.
5 You can look at it right now. You can pull it up. It's all
6 there. It goes from last year, maybe to 2022. And it -- it
7 is clearly says 150 lots for phase 1 approved on May 9th, 182
8 lots for phase 2 were denied on March 12th.

9 Then it says preliminary subdivision A, Anderson
10 Reserve, phase 1 and two. It says what's going to be
11 considered the number of lots. All this is on the website
12 and all this is prior to meeting. And so the agenda was --
13 that he's referring to is the agenda that lays out all the
14 projects to be considered that night.

15 And on that agenda, on that website, your Honor, again,
16 you can look it up. I don't think I brought that today. I
17 brought it for March and -- and December. I see. But I
18 don't think I brought it for April. But it says exactly what
19 was going to be considered and that's what they voted to
20 approve that agenda and that's what was agreed to
21 unanimously. So the post --

22 THE COURT: Can you make sure you have a copy of that
23 agenda for me to look at?

24 MR. DAWIN: Absolutely. I'll -- I'll submit it to you.
25 Oh, here we go, your Honor.

1 THE COURT: Well show it to Mr. Carpenter.

2 MR. DAWIN: I will.

3 MR. CARPENTER: Well, with this -- we don't know
4 whether this is the agenda as printed or the agenda as
5 previously published.

6 THE COURT: We'll make you a copy and you can check.

7 MR. CARPENTER: Well, I -- I --

8 THE COURT: I would suspect the counsel will see here
9 make representation is not true.

10 MR. DAWIN: Well, I'll just say it's what's on the
11 website, your Honor. Again, it's public record and that's
12 where -- and -- and that's where all of these -- every
13 project that's going to go before the commission at any
14 meeting that agenda's posted, and then all the documents that
15 the developer has submitted for consideration is also on the
16 website. This is just a small packet I hand it to your
17 Honor. So I -- I don't think there's any violation of FOIA
18 because this postcard that was sent to them is not the
19 agenda. It's just a --

20 THE COURT: Can I have a copy of that, we'll make you a
21 copy, Mr. Carpenter.

22 MR. CARPENTER: But -- but the point I'm making is --

23 THE COURT: Well, hang on, let him finish.

24 MR. CARPENTER: Okay.

25 THE COURT: All right. So are you done?

1 MR. DAWIN: I am, your Honor. Yes.

2 THE COURT: All right. We -- guys, we got step this
3 up. We got a lot of guys who got to get some hearings done.

4 MR. CARPENTER: The -- the point I'm making is that
5 agenda, we don't know whether that was the agenda adopted at
6 the meeting on May -- April 9, the new agenda or whether that
7 was the one previously published.

8 It -- it looks like the one that was adopted on April
9 9, but the FOIA requires advance notice of the agenda and
10 from the -- from the transcript of the hearing, it looks like
11 they voted to change the agenda the first thing at the
12 beginning of the meeting, and they didn't have an emergency
13 to do it. They just voted to have the new agenda as printed
14 instead --

15 THE COURT: Was the agenda as published versus what is
16 approved different from what you just handed me?

17 MR. DAWIN: No, your Honor. The agendas on the website
18 is the agenda being --

19 THE COURT: What you just handed me was what was out
20 there before the meeting and what was approved at the
21 meeting?

22 MR. DAWIN: Correct, your Honor.

23 THE COURT: All right. All right. Next argument.

24 MR. CARPENTER: All right. Third cause of action is
25 that the -- the planning commission made a decision outside

1 the public meeting in violation of FOIA.

2 We look at the third tab; the meetings of public bodies
3 should be open -- open to the public. And as opposing
4 council represented, there was a developer -- developer who
5 appealed the denial of the December denial.

6 They filed a lawsuit in -- in the circuit Court Spano &
7 Associates Asheville, LLC against Anderson County Planning
8 Commission. They did the same thing we're doing. But then
9 they asked for mediation and -- and they -- they went into
10 mediation and they started meeting with members of the
11 planning commission. This is -- this is reflected in the
12 minutes.

13 They started meeting with members of the planning
14 commission and working out the details as represented by
15 council previously. And they went back and forth and they
16 changed this and they altered that. Then they came back in
17 March and they lost the vote again. Then they went back and
18 met some more and altered some more things.

19 And then when they got to the April meeting, there was
20 a perfunctory vote to approve it. And that's what we're
21 contending that this -- this decision was made in all these
22 meetings behind the scenes to approve the new version of this
23 development. That was all done in these behind the scenes
24 meetings and not in the public. The only thing that happened
25 to the public was --

1 THE COURT: Isn't that what staff does? They go back
2 and they do a -- a proposed development and they -- they look
3 for something wrong with it. After there's a problem, they
4 go back and work on it, and then they come up with something
5 that's acceptable and they put it on the record. Is that
6 wrong? It seems to me that's what -- that's what's done all
7 the time.

8 MR. CARPENTER: Well it -- it may be done a lot in --
9 in regular litigation and so on, but --

10 THE COURT: This isn't regular -- I'm not -- I'm saying
11 in front of the planning commission. They have the staff.
12 If there's a problem, they go and meet with the staff and
13 work with the staff. Isn't that not the way it always works?

14 MR. CARPENTER: Well, this is formal mediation as a
15 result of the appeal, but then the decision was -- was made
16 we contend outside the presence of a public meeting and
17 that's the violation of FOIA. Decisions have to be made in
18 the public meeting. instead of in -- in the back room
19 somewhere.

20 MR. DAWIN: Your -- your Honor, first of all, the
21 obligation, if a party appealed asks for pre-suit mediation,
22 we have to, by statute, we -- we can't say no. And Ms.
23 Hunter (ph) comes with me to the mediations that are
24 requested at any point, whether it be developer or a third
25 party has a -- an issue with a -- anything that was approved

1 by the commission or denied by the commission.

2 THE COURT: Well, let me ask you this. If I have a
3 plan that's submitted to the commission is voted down. And
4 the staff says these are the problems, for example, I don't
5 have enough lots facing the green area. What is the step the
6 happens next?

7 MR. DAWIN: The developer retweaks their project,
8 submits it again and it goes back before the commission for
9 approval or denial. And as opposing counsel said, the April
10 vote, your Honor, actually the motion was made to deny the
11 project by Commissioner Jones. And then she was -- four --
12 it was a four, two vote to not deny it.

13 So it was not made to approve, it wasn't rubber
14 stamped. These things come back, you'll see the minutes.
15 There's discussions just like what -- there were discussions
16 in December and in March. But we -- I mean, Ms. Hunter goes
17 with me and she's the planning, development and building
18 director. No commissioners go to these pre-suit mediations.
19 But again, we have to. If they had requested it, we would
20 have done the same thing to them.

21 So I -- I don't -- I don't think that is anything that
22 should come before the Court because as you said, that's what
23 staff does. They deal with the developers on issues.
24 Court's told me before we needed to be transparent with
25 developers on what they need to do instead of just keeping

1 them in the dark, which is what was done. Again, it was
2 submitted to the commission for them to vote to either
3 approve or deny.

4 THE COURT: All right. Next argument, next item.

5 MR. CARPENTER: All right. The fourth cause of action
6 is that one of the members of the planning commission had a
7 conflict of interest. One of the members of the commission,
8 we -- we submitted to the Court the -- the printout of who's
9 on the commission.

10 We cited the statute that prohibits conflicts of
11 interest, 8-8-13-700. We submitted the members of the
12 commission, one of whom is James McClain, MD, who's employed
13 by AnMed. And we -- we've attached his profile from the
14 hospital showing that he is indeed employed by the hospital.

15 This property is owned by AnMed and he's voting on this
16 property. We believe it may be under contract to somebody
17 else, but the public records show AnMed still owns this
18 property and he is voting on the approval of this project ---
19 this property, and he's employed by AnMed.

20 We believe that that's a violation of 8-13-700. "No
21 public official may knowingly use his official office
22 membership or employment to obtain the economic interest for
23 himself, a family member or so on, or a business with which
24 he is associated."

25 Again, "No public, official, public member or so on may

1 participate in making a -- or in attempting to use his office
2 of membership to influence a government decision in which he
3 a family member of individual who's -- with whom he's
4 associated, or a business with which he is associated as an
5 economic interest."

6 Those are prohibitions of having conflict of interest.
7 He's an employee of the hospital devoting on a piece of
8 ground owned by the hospital. We think that's a conflict of
9 interest.

10 THE COURT: All right. Thank you, sir.

11 MR. DAWIN: Thank you, your Honor. He's not employed
12 at hospital. He has hospital privileges to AnMed. But he's
13 not an employee. And your Honor, if you want me again, I can
14 hand my --

15 THE COURT: Is this Frankie McClain's son?

16 MR. CARPENTER: James T. McClain, MD. Yes.

17 THE COURT: It is. Okay.

18 MR. DAWIN: So secondarily, your Honor again, you can
19 look at the March minutes, they are public record on -- on
20 the planning commission's website, I -- I don't hear any
21 objection to Dr. McClain having voted in March minute when he
22 voted to deny this same project.

23 This time he thought enough information that the --

24 THE COURT: Two wrongs doesn't make a right.

25 (Inaudible).

1 MR. DAWIN: I understood, but he's not an employee,
2 your Honor.

3 THE COURT: All right.

4 MR. DAWIN: I -- I specifically asked that when this
5 came along on, this lawsuit. He has privileges, but he's not
6 employed by AnMed.

7 THE COURT: Anything further? Any other grounds?

8 MR. CARPENTER: We have a fifth and sixth. Yes, your
9 Honor.

10 THE COURT: Sir?

11 MR. CARPENTER: We have a fifth and sixth. Yes.

12 THE COURT: What are they?

13 MR. CARPENTER: Fifth is failure to have a master plan
14 and master plat. The Anderson County Anderson county
15 ordinances require a master plan and a master plat for each
16 of these developments.

17 In this case they -- they have forecast phases one,
18 two, and three. They only have plans laid out for phases one
19 and two. We think that the failure to have a master plan and
20 a master plat for the whole development violates the county
21 ordinance that requires that the master plan on a master
22 plat.

23 THE COURT: All right. Stop there (inaudible).

24 MR. DAWIN: Your Honor, the only thing that was before
25 the commission that night was phase 2. Phase 1 had already

1 been approved. There's discussion in the minutes that you'll
2 see on what I handed up.

3 Phase 3 may be storage buildings.

4 Phase 3 may be something the admin does with property. The
5 developer doesn't know. Developer wanted approval or a
6 consideration of phase 2. And that's all that was before the
7 commission that night.

8 THE COURT: Lastly.

9 MR. CARPENTER: Okay sixth cause of action is the
10 failure to fulfill the duty to vote under the --

11 THE COURT: Duty to do what?

12 MR. CARPENTER: The duty to vote. We -- we've handed
13 up a case called Gaskins v. Jones which is from the states --
14 from the Supreme Court of South Carolina. And that case
15 states, "As long as the members are present and the council
16 chamber have an opportunity to act and vote with the others
17 as their duty to act."

18 One of the commissioners David Cothran commissioner
19 from District 5 left the meeting prematurely for unstated and
20 unspecified reasons. That's indicated in April meeting
21 minutes. And there the -- the -- the rule is, the common law
22 rule is that when you have commissioners or council members
23 and so on, they can't just decline to vote.

24 If they have a conflict of interest, they have to put
25 the conflict of interest on the record. They have to give a

1 written statement to the chairman saying, I'm not voting on
2 this because of, you know, I have a conflict, I have an
3 ownership interest. My brother-in-law does, whatever.

4 They have to articulate the reason. The -- the general
5 rule is that if a person doesn't vote, then his vote is
6 counted with the majority. The problem comes when a person
7 does have a conflict, doesn't reveal it, and then his vote is
8 counted with the majority and there's this common law duty to
9 vote and that which is articulated in Gaskin v. Jones in the
10 case that we had handed up to the Court there.

11 MR. DAWIN: Your Honor, Mr. Cothran had told the chair
12 before the meeting started that depending on the timing, he
13 may have to leave for personal reasons. That's what he did.
14 He didn't vote. His vote was not counted. The -- the vote
15 in the minutes, you see are four, two. And you'll see the
16 commissioners that voted, those that didn't nothing's counted
17 on his vote whatsoever.

18 MR. CARPENTER: All right.

19 THE COURT: Gentlemen, I'm going to go through and read
20 all your submissions. I'll tell you that (inaudible) hearing
21 about it, before you read those allegations, but my concern
22 is under the first round was about there being a cemetery.
23 And -- and it seems to me, even though it's somewhat, I
24 wouldn't know -- what's the term I'm looking for strained or
25 a little bit far away.

1 But if you were, as a body told, as an owner, we know
2 that there are graves out there. My father told me. To do
3 nothing, to do absolutely nothing or require nothing to be
4 done seems to be arbitrary and -- and capricious to me. And
5 it would make -- send it all the way back down to do it all
6 over again.

7 And I might just do that. But if I do, the -- the
8 plaintiffs in this case, to the extent there might be those
9 type of tests run at this area, have agreed to pay. So they
10 will pay it if -- if it goes back down, if I think that's the
11 thing to do. Otherwise I'm going to read through the other
12 submissions and let y'all know. Okay. All right, guys.
13 Take care.

14 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING IS CONCLUDED)

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CERTIFICATE OF TRANSCRIBER

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I, JANE DANIEL, a court-approved 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 of Andeson County, South Carolina, on August 21, 2024.

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

Jane Daniel

November 18, 2025

JANE DANIEL

TRANSCRIBER