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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2025-CP-04-00328

Hubert N. Smith, Jr. and Stanley Hix, ... Appellants,

v.

Anderson County Planning Commission and Spano & Associates, Inc. .... Respondents,

Appellants' Initial Brief

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STATEMENT OF ISSUES ON APPEAL

I. Did the Planning Commission fail to meet the threshold of respect and care for remains and burial grounds demanded by South Carolina common law and abuse its discretion when it "reaffirmed" an old map rather than the updated map and failed to require an attempt to identify and notify descendants?

II. When The Planning Commission "Reaffirmed" the Old Map, Did the Planning Commission "Reaffirm" the Wrong Drawing Instead of the New Drawing in Violation of S.C. CODE ANN. § 16-17-600?

III. When the Planning Commission "Reaffirmed" the Old Map, Did the Planning Commission Fail to Protect Burial Grounds Under S.C. CODE ANN. § 27-43-10 ff?

IV. When the Planning Commission Failed to Have a Hearing On the Plan, and Failed to Adopt a Map That Protected the Graves and Instead "Reaffirmed" the Wrong Map, Did the Planning Commission Violate the Anderson County Code and Abuse Its Discretion?

V. When Spano & Associates, Inc. Is Neither the Owner of the Property Nor the Developer, Does Spano & Associates Have Standing to Intervene?

VI. Should This Court Deny the Motion to "Correct the Record" Because the Movant Lacks Standing and the Matter is More than a Clerical Error?

STATEMENT OF THE CASE

This case is an appeal from the Anderson County Planning Commission. The Anderson County Planning Commission approved a residential subdivision named Anderson Reserve.

On April 9, 2024, the Commission gave preliminary approval to a development called Anderson Reserve. After an appeal to the Circuit Court and a remand, on January 14, 2025, the Commission again approved the development. Appellants appeal this decision (the "Decision").

Appellants Hubert N. Smith, Jr., and Stanley Hix are taxpayers and nearby landowners. They are some of the 152 property owners within the 2000-foot radius of the proposed subdivision (the "Property").

This case is the **third** lower court appeal related to Anderson Reserve. The first appeal was *Spano & Associates Asheville, LLC v. Anderson County Planning Commission*, Civil Action Number 2024-CP-04-00006, filed January 2, 2024. The second appeal was *Hubert N. Smith, Jr. and Stanley Hix v. Anderson County Planning Commission*, Civil Action Number 2024-CP-04-00975; and the third was *Hubert N. Smith, Jr. and Stanley Hix v. Anderson County Planning Commission and Spano & Associates, Inc.*, Civil Action Number 2025-CP-04-00328.

This third case is now on appeal.

BACKGROUND AND CONTEXT

The Commission approved Phase 1 of Anderson Reserve, in May 2023. The developer proposed 150 residential lots on the Property as Phase I, and Phase II proposes 232 houses.

In December 2023, the Appellants notified the Commission that slave graves were on the Property. The Commission voted the project down. On January 2, 2024, the developer appealed to the Circuit Court, case number 2024CP0400006 and requested mediation.

Appellants had presented the Commission with an affidavit of Kenneth Eugene Rhodes, a descendent of the former landowners of the Property, in which he testified that there were certain unmarked, or poorly marked graves of former slaves who lived on the Property that the developer had not addressed. The Commission failed to deal with the issue of these graves.

In March 2024, the Commission voted down the project.

The developer then proposed a new preliminary subdivision called Anderson Reserve Subdivision 1 and 2. The plan passed on April 12, 2024. Accordingly, the developer dismissed its appeal.

Appellants appealed the decision to this Court.

After Appellants first appealed (April 2024), Spano (or another company) bought the property May 20, 2024, even though it was in litigation. Spano knew of Appellant's allegations about the graves, because they hired architects to look for the graves, starting in June 2024. But they did not ask to be a party until October 2024. Spano allowed Anderson County to represent its interests.

The Circuit Court reversed the Commission's decision for failure to deal with slave graves. (Order dated August 30, 2024): "The Court finds that the Planning Commission's failure to consider and require some affirmative action by the developer to determine whether slave graves exist was arbitrary and capricious, and the failure of the Planning Commission to do so was an abuse of discretion." *Id.,* p. 2.

The Commission filed a Motion to Alter or Amend (Motion filed September 9, 2024).

Unbeknownst to the Commission, after the Appellants had filed their appeal to the Circuit Court, the developer "voluntarily" secured a contractor to conduct a site visit and make a report concerning the possible slave graves. The developer's contractor studied historical literature of

the Rivoli Plantation and found a poem called “Graveyard Hill,” written by a former resident of Rivoli Plantation, describing the burial ground for slaves (Memorandum and Exhibits in Support of Motion)

Spano gave its archeological survey to Anderson County after the Court had announced its intent to rule against the Planning Commission and allow Appellants the opportunity to find the graves. Spano’s surveyor found “suggested” graves, that they said would be protected, but they failed to identify “Graveyard Hill” or historical archeological sites.

However, the contractor searching the soil at the time usually searches for utility placements and disturbed soil; it is not properly trained to perform ground-penetrating radar to detect burial shafts (Memorandum and Exhibits in Support of Motion). Nevertheless, the SM&E Report concluded that “the area marked in Figure 19, the landform behind the barn, was where the burials were located (Report). This area should be fenced and avoided during ground disturbing and construction activities” (Report, page 3). The utility contractor did not find “Graveyard Hill” (Report).

In October 2024, the Circuit Court, with the apparent consent of the developer, allowed the Appellants 10 days’ access to the property to search for graves. Appellants’ experts searched two locations and found about 14-20 graves in one location (“Graveyard Hill”), in addition to Figure 19 in the August 23, 2024, developer’s report. Appellants’ experts also found that further study could indicate more graves (Report).

On October 25, 2024, the Court held a conference call with the parties and counsel for Spano & Associates, Inc. Spano confirmed that it had issued a “no trespass” notice to the Appellants. The Court denied the Defendant’s Motion to Alter or Amend and remanded the case to the Commission (Order)

On October 28, 2024, Spano & Associates, LLC filed a Motion to Intervene. On October 29, the Commission filed a Motion to Dismiss.[1] On November 20, 2024, the Court issued a formal written Order confirming its prior oral ruling to remand.

On December 7, 2024, the developer submitted a second report from S&ME to the Commission (Report). The developer experts again found no clear evidence of graves but proposed to set aside some land.

On December 9, 2024, the Appellants wrote to the Commission, with exhibits from their experts, showing graves of enslaved persons on a large mound on Rivoli Plantation, probably "Graveyard Hill," referenced in the poem in the S&ME report (Letter of December 9, 2024). These graves are documented in two reports. Ground penetrating radar confirms they are burial shafts. Both of Appellants' experts also recommended a **full search** of the **entire** Rivoli Plantation.

Upon receipt of the Appellants' report and exhibits, the Commission postponed the hearing on this project scheduled for December 11, 2024.

Thereafter, in December 2024, the developer sent his experts back to the property. On December 23, 2024, S&ME and the developer produced a supplemental report to the Commission investigating the evidence of the Appellants (Exhibit 6 to the Developer's Prehearing Brief). S&ME confirmed the Appellants' findings. They said:

> Area 2 [**Graveyard Hill] should be considered a cemetery** and as such, is protected by state law. Preservation of this area and a 30-ft buffer should be established around the cemetery, marked with temporary orange construction fencing during construction, marked on construction plans as an environmentally sensitive area, and no staging of materials or parking of equipment or vehicle should occur within the cemetery or the buffer.

[1] On February 7, 2025, the Court heard and granted the developer's Motion to Intervene and the Commission's Motion to Dismiss, concluding the prior appeal.

Report, p. 3 (*emphasis added*). The developer also presented to the Commission a new map of the Anderson Reserve subdivision, protecting Graveyard Hill.

Spano's second survey in December 2024 (adopting the Appellants' survey), asserts there are **no** graves where they initially said they "found" them (Survey).

On January 14, 2025, the Commission met in executive session, apparently with its counsel. Then the Commission returned to the public meeting and adopted, without discussion or public input, the following motion, which is the subject of this current appeal:

> In reference to the August 23 SM&E study done by the developers, I make the motion that the developers went above and beyond to determine if there were any grave sites on the property, based on the August 23, 2024, and the December 7, 2024, studies done by SM&E. I have also considered the December 9, 2024, submission by the attorneys for the appellant.

Commission Minutes of January 14, 2025, p. 19, ll. 41-47 (Exhibit 5 to the Developer's prehearing brief). The motion does not mention the supplemental report of the developer's experts. Despite the Commission's contention that it was taking into consideration Appellants' findings, they did not vote to act on them (Memorandum with Exhibits in Support of Motion)

The Commission made a second motion:

> I make a motion that we reaffirm the decision made by the Anderson County Planning Commission, made on April 19, 2024.

(Commission Minutes of January 14, 2025, p. 20, lines 14-17). By the second motion, the Commission voted to "reaffirm" the old map dated March 21, 2024, that showed the graves being destroyed and made into residential building lots and streets.

The Commission held no public hearings prior to the adoption of either Motion. The Commission allowed no input or comments from the public or neighbors in relation to the Motion. The Commission failed to make available to the public the December 7, 2024, study referenced in the Motion and failed to make available the developer's supplemental report.

Appellants contend that the Land Administrator cannot accept a new map by proxy, without following the Rules and conducting a public meeting with comments from the public (Memorandum in Support of Motion). Chapter 24 Rules must be reviewed by the staff and voted on by the Planning Commission. Since the staff did not present this to the Planning Commission, they may not even know that a map, different from the one they voted on, the one in the official records, and the April 2024 map does not protect the graves.

The Commission failed to make publicly available the Appellants' report and exhibits, confirming the presence of "Graveyard Hill" and the slave graves, as referenced in the motion. The Commission failed to disclose whether the December 7, 2024, study and the supplemental study confirms or contradicts the findings of the December 9, 2024, letter from the Appellants.

In the second appeal, the Circuit Court gave the Planning Commission four questions to consider. The Planning Commission's two motions in January 2025 failed to address those four questions.

Appellants appeal the Commission' s January 14, 2025, decisions and motions.

STANDARD OF REVIEW

Generally, the Court's authority on appeals from a planning commission is limited. "By statute, the trial court must uphold a decision by the Planning Commission unless there is no evidence to support it." *Town of Hollywood v. Floyd*, 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013).

> "In reviewing questions presented on appeal, **the court must determine** only whether the decision of the board is **correct as a matter of law**." . . . "A court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with that decision." . . . A . . . board's decision will be overturned if it is "**arbitrary, capricious**, has no reasonable relation to a lawful purpose, or if the board has **abused its discretion**."

Furr v. Horry County Zoning Bd. of Appeals, 411 S.C. 178, 183-84, 767 S.E.2d. 221, 224 (Ct.App.2014) (*citations omitted*) (*emphasis added*).

However, matters of law are judged by the Court of Appeals without any deference to the Circuit Court.

INTRODUCTION

This case is about an abuse of discretion that violates South Carolina common law and statutory law and will cause irreparable harm. The Anderson Count Planning Commission abused its discretion by relying upon and citing an outdated map and accordingly, a misleading report on the existence and location of burial grounds and remains in its approval of a development. (Maps; Reports, pp. ; Affidavits, pp. ; Minutes, pp. ; Transcript, pp.).

In ignoring the updated map which identified a high probability of GPR anomalies and and relying on this report (which did not delineate the boundaries of all of these potential burial grounds) the Commission was arbitrary and capricious. Accordingly, when any construction might begin, it would likely produce not only criminal and civil statutory violations, but also irreparable harm to the gravesites and remains (Maps; Reports, pp. ; Minutes, pp. ; Affidavits, pp. ; Transcript, pp.).

Further demonstrating this abuse of discretion after receiving notice, according to the testimony of Deacon Albert Simmons of New Holly Missionary Baptist Church who providing formal testimony stated that according to his ancestral knowledge, enslaved individuals who died on the Rivoli plantation were taken "out behind the barn along where the creek is" for burial (Affidavits, pp. ; Transcript, pp.).

Even so, the Anderson County Planning Commission disregarded and failed to rely upon this testimony in its decision, and failed to cite and rely upon the most recent map which more fully identified and confirmed:

- Anomalies: Ground-penetrating radar (GPR) identified 16 potential burials in one section (Area 1) and 17 potential burials in another (Area 2).
- High-Probability Zones: While Area 1 was rated as low-to-moderate probability, Area 2 (the mound near the creek) was classified as a high-probability area for a cemetery.
- Physical Evidence: Fieldstones aligned east-to-west, a traditional burial marker orientation for enslaved African Americans.

- Burial Depth: Ground scans found 14 anomalies consistent with burial shafts at depths between 3–5 feet.
- Historical Context: The Report notes that these sites likely contain the remains of enslaved African Americans from the Rivoli Plantation or less possibly Native Americans.

(Maps; Reports, pp. ; Affidavits, pp. ; Minutes, pp. ; Transcript pp.).

Instead, the Planning Commission approved the outdated map that still showed development over the gravesites identified in the new map, rather than protecting the gravesites (Maps; Report, pp. ; Minutes, pp. ; Affidavits, pp. ; Transcript, pp.). In addition, the Planning Commission also failed to set a notice period to identify and notify descendants of those buried on the property before the Commission would take further action (Report, pp. ; Minutes, pp. ; Affidavits, pp. ; Transcript, pp.).

Accordingly, the Court erred in failing to rule that the Planning Commission abused its discretion (Orders, pp.). Furthermore, the Court erred in allowing an intervenor to join the action which is neither an owner nor developer of the land at issue in the present case and did not have standing before the court (Orders, pp.). In addition, as demonstrated below, at this late stage of the litigation, as it considers the motion to change party names before it, this Court should not grant this change in the parties because the error is more than clerical.

ARGUMENT

I. The Planning Commission Failed to Meet the Threshold of Respect and Care for Remains and Burial Grounds Demanded By South Carolina Common Law and Abused Its Discretion When It "Reaffirmed" an Old Map Rather Than the Updated Map and Failed to Require an Attempt to Identify and Notify Descendants.

In examining the Planning Commission's arbitrary and capricious abuse of discretion, not only the statutory law but also the common law of South Carolina set the context of the case at bar and establish the level of respect and the presumption of continuing care of burial grounds and remains as matters of sacred and inviolate trust.

South Carolina law has long recognized a continuing "sentiment of humanity" that runs with the land holding burial grounds. *Frost v. Columbia Clay Co.*, 130 S.C. 72, 124 S.E. 767 (S.C. 1924) (quoting *Ex parte McCall*, 68 S.C. 492, 47 S.E. 974 (*Little v. Presbyterian Church of Florence*, 68 S.C. 489, 47 S.E. 974 (1904) S.C)).

> "It is also true, as a general proposition, that where ground has been dedicated to the public for use as a cemetery, the owner cannot afterward resume possession or remove the bodies interred therein, although he has received no consideration for its use, and the interments were made merely by his consent. [Cases cited.] This doctrine is somewhat anomalous, and is not to be extended beyond the principle upon which it is founded. That principle is that **the most refined and sacred sentiments of humanity cluster around the graves of departed loved ones, and that when these sentiments have become associated and connected with a particular spot of ground, by the invitation or consent of the owner, he shall not, for any secular purpose, disturb them**."
>
> The laws do, or should, set forth the sentiment of the people who are subject to them. This is particularly true under a government like ours. From the time of Abraham, **the places where the dead were buried have been considered sacred and inviolate**. All nations respect the graves of the dead. The graves of ancestors are a subject of idolatrous worship by the heathen. Our literature is full of references to the last or final resting place. In some of our church literature we find the statement that the bodies of our dead "do rest in their graves until the Resurrection." These burial places are sometimes called "God's Acre." **The idea of *perpetuity runs through nearly all references to the grave*.**

Frost (quoting Ex parte McCall, 68 S.C. 492, 47 S.E. 974 (*Little v. Presbyterian Church of Florence*, 68 S.C. 489, 47 S.E. 974, (1904 S.C)) (emphasis added).

Furthermore, the Court, in *Ex parte McCall,* 68 S.C. 492, 47 S.E. 974 (*Little v. Presbyterian Church of Florence*, 68 S.C. 489, 47 S.E. 974, (1904 S.C)), has recognized a family right which descends continuously to protect burial grounds. *Id.*

> There is no right of property in a dead body, in the ordinary sense in which the word "property" is used, but **the law recognizes a family right which descends from generation to generation to protect the bodies of deceased relatives from indignity and the ground in which they are interred from unnecessary invasion or disturbance**.

Id.

South Carolina common law has also demonstrated this respect by recognizing property rights of descendants and a presumption of continuing care and concern of descendants for a burial place. Fred O. Smith, Jr., *On Time, (In)equality, and Death*, 120 Mich. L. Rev. 195 (2021).

> The Supreme Court of South Carolina on at least two occasions has ruled strongly (in somewhat different contexts) in favor of descendants of persons interred in private cemeteries. In *Kelly v. Tiner,* 91 S.C. 41, 74 S.E. 30 (1912), the Court allowed relatives of deceased persons to file a trespass action against the owner of the surrounding land who, it was claimed, was trying to turn the cemetery into arable land. In *Frost v. Columbia Clay Co.,* 130 S.C. 72, 124 S.E. 767 (1924), the Court indicated **a strong presumption that a graveyard was not to be deemed abandoned despite a period of neglect by the descendants**.

Id. (citing 2002 S.C. Op. Att'y Gen. (Apr. 2, 2002) (to Rodger E. Stroup).

Not only does the common law of South Carolina require this sacred respect and continuing care, but also its statutory law. Among other protections of the burial grounds and remains as demonstrated below, South Carolina statutory law prohibits owners of land which includes burial grounds from "**willfully and knowingly**" **destroying or damaging the remains of a deceased human being or burial grounds where remains are buried**. 2 S.C. Jur. Cemeteries § 21 (citing S.C. Code Ann. § 16-17-600) (emphasis added).

In the case at bar, the developer and the planning commission were given notice of the by testimony of a descendant of enslaved residents of Rivoli Plantation and more particularly an updated map with additional, specific ground scans showing further discovery of burial grounds and potential for more discovery, and yet the Planning Commission arbitrarily and capriciously approved the development anyway (Affidavits, pp. , Report, pp. , Maps, Transcript, pp.).

Even more concerning, the Planning Commission based its approval upon an outdated map that did not include this most recent and more extensive attempt to identify potential sites with ground imaging (Complaint, pp. ; Affidavits, pp. , Report, pp. , Maps, Transcript, pp.). Consequently, if this development proceeds without reliance on the current map which indicates a need for further ground imaging, and without any statutorily prescribed identification of and notice to descendants, any future disturbance of burial grounds or remains of ancestors on the land will be "wilful" and "knowing" by not only the developer, but also by the Planning Commission itself. S.C. Code Ann. § 16-17-600.

Accordingly, the Planning Commission has failed to meet the threshold of respect and care demanded by South Carolina common law and has abused its discretion by approving the development based upon on old map that did not show the burial grounds indicated by ground penetrating radar and showed building on top of those burial grounds (Maps; Reports, pp. ,; Minutes, pp. ; Transcripts, pp. ; Affidavits, pp.). Furthermore, the Commission failed to meet the threshold of respect and care and abused its discretion by failing to require identification and notification of descendants (Maps; Reports, pp. ,; Minutes, pp. ; Transcripts, pp. ; Affidavits, pp.).

II. When The Planning Commission "Reaffirmed" the Old Map, the Planning Commission "Reaffirmed" the Wrong Drawing Instead of the New Drawing in Violation of S.C. CODE ANN. § 16-17-600.

The Commission "reaffirmed" the drawing dated March 21, 2024, and not the developer's new drawing from December 2024 (Affidavit of Stanley Hix, Exhibit 1 to Memorandum in Support of Motion).

AFFIDAVIT OF STANLEY HIX

1. My name is Stanley Hix. I am a Plaintiff in this action, and I own real estate near Anderson Reserve, the development at issue in this litigation.
2. On January 14, 2025, the Planning Commission considered new information from the developer of Anderson Reserve, Spano and Associates; and considered information from the Plaintiffs. The Planning Commission also voted to commend the developer for his efforts in searching for slave graves on the property. Finally, the Planning Commission voted to approve a map and diagram of the Anderson Reserve. I was concerned about which map the Planning Commission approved.
3. On or about February 4, 2025, I filled out a County FOIA request form on the Anderson County website, requesting a copy of the map that the Planning Commission had approved in the January 14, 2025, meeting.

The Planning Commission re-approved the old map.

4. On or about April 21, 2025, Lizzie R. Wilkes of the Anderson County FOIA Office responded to my FOIA request with a copy of the Anderson Reserve map, dated **March 21, 2024**. This is the map the Planning Commission adopted **April 9, 2024**. This is **not** the map that protects "Graveyard Hill."
5. The Planning Commission voted to approve the **wrong map**, and they **reaffirmed** their vote from April 2024, which also **did not protect Graveyard Hill.**

Id. (*Emphasis in original*).

In the appeal to the Circuit Court, on June 1, 2025, the developer submitted a Prehearing Brief. Attached to the developer's Prehearing Brief was Exhibit 4, a **new map** of the Anderson Reserve subdivision. This is **not** the map that the Commission "reaffirmed" as had been

represented (Transcript; Brief). In fact, although it is hard to read, and it needs to be enlarged, the map is dated **<u>April 21, 2025</u> (Exhibit 4)**. The developer incorrectly represents that this is the latest map of Anderson Reserve (Transcript, pp. ; Briefs, pp. ; Reports, pp. ; Minutes pp.). The lot numbers on Exhibit 4 are impossible to read due to the lack of definition in the exhibit. The plat attached as Exhibit 4 is drafted by a different engineering and architectural firm, Seeman Whiteside of Greenville, South Carolina, as opposed to the preliminary plat adopted in April 2024, and readopted in January 14, 2025, which was created by LJA Engineering of Alpharetta, Georgia.

The developer also submitted to the Court Exhibit 7 to its Prehearing Brief, some proposed covenants by which it proposes to protect Graveyard Hill. The lot numbers on Exhibit 7 are legible; and a comparison of Exhibit 7 with the map adopted April 2024, drawn by LJA Engineering, demonstrates the **<u>lot numbers are completely different</u>** on Exhibit 7. The total number of lots is also different. Accordingly, the Planning Commission has not adopted, or even voted on Exhibit 4, **<u>dated April 11, 2025</u>**, that the developer represents as the latest version of the map of Anderson Reserve.

By voting to "reaffirm" the wrong map, the Commission **<u>has not required</u>** the developer to protect Graveyard Hill, nor has the Commission approved any modified map or drawing of the subdivision to address the presence of Graveyard Hill and one other possible gravesite, either before or after the reports by the developer or by the Appellants. The Commission's decision approving the old map was an abuse of discretion, in violation of South Carolina law. It should be reversed.

III. When the Planning Commission "Reaffirmed" the Old Map, the Planning Commission Failed to Protect Burial Grounds Under S.C. CODE ANN. § 27-43-10 ff.

South Carolina law prohibits the destruction of or the desecration of human remains or burial grounds.

> (A) **It is unlawful for a person wilfully and knowingly**, and without proper legal authority to:
> (1) **destroy or damage the remains of a deceased human being**;
> (2) remove a portion of the remains of a deceased human being from a burial ground where human skeletal remains are buried, a grave, crypt, vault, mausoleum, Native American burial ground or burial mound, or other repository; or
> (3) **desecrate human remains**.
> A person violating the provisions of subsection (A) is guilty of a **felony** and, upon conviction, must be fined not more than five thousand dollars or imprisoned not less than one year nor more than ten years, or both.
>
> * * *
>
> (B) **It is unlawful for a person wilfully and knowingly**, and without proper legal authority to:
> (1) obliterate, vandalize, or **desecrate a burial ground** where human skeletal remains are buried, a grave, graveyard, tomb, mausoleum, Native American burial ground or burial mound, or other repository of human remains;
> (2) deface, vandalize, injure, or **remove** a gravestone or other memorial monument or **marker commemorating a deceased person** or group of persons, whether located within or outside of a recognized cemetery, Native American burial ground or burial mound, memorial park, or battlefield; or
> (3) obliterate, vandalize, or desecrate a park, Native American burial ground or burial mound, or other area clearly designated to preserve and perpetuate the memory of a deceased person or group of persons.
> A person violating the provisions of subsection (B) is guilty of a **felony** and, upon conviction, must be imprisoned not more than ten years or fined not more than five thousand dollars, or both.
> (C)(1) **It is unlawful** for a person wilfully and knowingly to steal anything of value located upon or around a repository for human remains or within a human graveyard, cemetery, Native American burial ground or burial mound, or memorial park, or **for a person wilfully, knowingly**, and without proper legal authority to **destroy, tear down**, or injure any fencing, **plants, trees, shrubs, or flowers located upon or around a repository for human remains**, or within a human graveyard, cemetery, Native American burial ground or burial mound, or memorial park.

S.C. Code Ann. § 16-17-600 (emphasis added). Accordingly, the Commission failed to protect the burial grounds, as required by the statute.

Furthermore, S.C. Code Ann. § 27-43-10 ff. requires certain statutory processes and procedures in relation to graves and burial grounds, how they may be moved, the prerequisites to such removal, and the procedures required before removal. The Commission abused its discretion and failed to require compliance with these statutory prerequisites for protecting graves and burial sites and therefore violates S.C. Code Ann. § 27-43-10 ff..

IV. When the Planning Commission Failed to Have a Hearing on the Plan and Failed to Adopt a Map That Protected the Graves and Instead "Reaffirmed" the Wrong Map, the Planning Commission Violated the Anderson County Code and Abused its Discretion.

Chapter 24 of the Anderson County Ordinances requires a Master Plan and Master Plat for all residential real estate developments. *Id.,* § 24-367. A master plat was not presented to the public, for the January 14, 2025, meeting (Minutes, pp.). Neither has the Commission **approved an updated plat** from December 2024 or January 2025 for Anderson Reserve I and II (Reports, pp. ; Minutes, pp.). Furthermore, the developer **failed** to file and publish a Master Plan and Master Plat giving public notice of the nature and details of the proposed development as required by the ordinance (Reports, pp. ; Minutes, pp.). Accordingly, the vote to approve the development must be nullified for lack of a Master Plan and Master Plat.

In addition, the Anderson County Code section 24-335 **(Exhibit 2)** requires the developer to create a preliminary plat to be submitted for approval by the Commission, but before review by the Commission, "the subdivision administrator shall review the plat." *Id.,* § 24-335(2). Upon information and belief, the developer did not submit his revised plan to the "subdivision administrator," an abuse of its discretion (Maps; Reports, pp. ; Minutes, pp.).

The "subdivision administrator" is required to determine whether "the information provided on the plat fulfills the requirements of section 24-336." Anderson County Code§ 24-335(2)b. If not, the "subdivision administrator" rejects the plat. Section 24-336 contains 18 separate requirements of the subdivision administrator must review **(Exhibit 3).**

> **If the subdivision administrator determines** that the information provided on the plat fulfills the requirements of section 24-336, the subdivision administrator shall **submit a written recommendation** to the Planning Commission, suggesting either that the Planning Commission approve the plat or that the Planning Commission reject the plat and indicating the **reasons for said recommendation** and place discussion of the plat on the agenda for the next Planning Commission meeting.

> Written recommendation of the subdivision administrator shall be recorded in the minutes of said Planning Commission meeting."

Id., § 24-331(2)b (*emphasis added*). However, the Commission did not fulfill this important step in the process (Maps; Reports, pp. ; Minutes, pp. ; Affidavits, pp. ; Transcript, pp.). To change the map and move some lots into open space would necessitate the Commission staff to ensure that the new map **follows all the rules** for Chapter 24 conservation subdivisions *Id.* Accordingly, the Commission abused its discretion. If the approval of County Council is not overturned, there is no guarantee that all the rules of the County ordinance will be followed during any changes the developer makes to the map.

For purposes of the issues at bar in this case, section 24-336 requires "(18) For conservation subdivisions: Clear delineation of open space on plat." *Id.* It is important that the plat clearly delineate open space, which includes the burial grounds and Graveyard Hill. *Id.* Moving those lots into open space and using open space to replace them is a major and consequential change (Maps, Reports, pp. ; Affidavits, pp. ; Minutes, pp. ; Transcript, pp.). Depending on how the developer approaches the work, it would affect density. Furthermore, according to code, buffers must be rechecked, open space acreage must be checked, and views to open space as a percentage of lots must be rechecked. *Id.*

Instead, the County Commission voted to "reaffirm" the plat dated April 21, 2024, which **does not mention Graveyard Hill**, and does not protect the graves and burial grounds on Graveyard Hill as open space, contrary to representations from counsel for the developer in an earlier hearing (Maps; Reports, pp, ; Minutes, pp. ; Affidavits, pp. ; Transcript). *See* the Affidavit of Stanley Hix.

The map of this proposed subdivision that the Commission "reaffirmed**"** shows that lots 107-111, and lots 117-121 and the road Spanish Oak Court **will level Graveyard Hill where**

about 14 or more graves were found, in violation of S.C. Code Ann. § 16-17-600 (*supra*). (Overlay showing Graveyard Hill as part of several lots and a street **(Exhibit 4)).**

There is nothing in the plat that the Commission "reaffirmed" that requires the developer to erect fences around, or cordon off, any of the area on "Graveyard Hill" containing slave graves. By "reaffirming" the **original plat before the grave locations were confirmed**, the Commission has not required the developer to place the slave graves on "Graveyard Hill" into an "open space" as required by Anderson County Ordinances 24-401 (7):

> **Chapter 24-401.**
> Conservation subdivisions allow for the **preservation of open space** in exchange for more compact development. The purpose of the conservation subdivision is to **preserve** agricultural and forestry lands, natural and **cultural features**, provide open areas for rest and recreation, and encourage the development of more attractive neighborhoods with economical site design that **conserve sensitive areas**. Specific objectives are as follows:
>
> * * *
>
> (7) **To preserve and maintain historic sites and structures that serve as significant visible reminders of the county's social, archeological, and architectural history.**
> (8) To create compact neighborhoods **accessible to open space amenities** and with a strong identity.

Id. (*Emphasis added*) **(Exhibit 5)**.

Anderson Reserve is a conservation subdivision (Reports, pp. ; Affidavits, pp. ; Minutes, pp. ; Transcript, pp.). However, the Commission **failed to require** the developer to confirm that the burial grounds on **Graveyard Hill will be preserved (**Maps; Reports, pp. ; Affidavits, pp. ; Minutes, pp. ; Transcript, pp.).

The Anderson County Planning Ordinance also requires:

> At the Planning Commission meeting during which the plat is scheduled to be discussed, **subdivision administrator shall present his recommendation** to the Planning Commission. Planning Commission shall then vote to approve or reject the plat during said meeting or at any subsequent meeting within 40 calendar days of said meeting. Should the Planning Commission fail to vote to approve or disapprove the preliminary plat within this 40-day period, the plat shall be deemed to be approved as submitted.

§ 24-331 (3) (*emphasis added*). Upon information and belief, the subdivision administrator has **not** made his recommendation to the Commission on the new plat submitted by the developer.

Instead, according to both defense counsel, the attorney for the Commission made a presentation to Commission in executive session, with no one else present, and with no opportunity for input from the public or any adjacent landowner (Reports, pp. ; Affidavits, pp. ; Transcript, pp.). To remedy this violation and abuse of discretion, the Commission should formally require the developer to move Graveyard Hill, an archaeological and historical site, into protected open space, pursuant to Anderson County Code, chapter 24-401, section 7.

Anderson Planning Ordinance further requires:

> Approval 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**. However, review and approval by other departments and governmental agencies must also be obtained, including, but not limited to, stormwater permits from county stormwater management and the Department of Health and Environmental Control (DHEC), which must be obtained prior to beginning land disturbing activity. A list of appropriate review agencies shall be maintained and available at the Planning Commission office. This list shall be periodically reviewed and updated.

§ 24-331 (5) (*emphasis added*).

The Commission's "reaffirming" of the "road alignments, dimensions, layout, shape of lots and proposed rights-of-way" shows that streets and building lots **go straight through the graveyard and burial grounds on Graveyard Hill**, destroying and desecrating all the graves on Graveyard Hill (Maps; Reports, pp. ; Affidavits, pp. ; Minutes, pp. ; Transcript, pp. ; Exhibit 4). Accordingly, the Court below erred in failing to enjoin the Commission's approval (Order, pp.).

Furthermore, the Anderson County Code § 24-367 establishes that if the developer fails to receive final approval within one year, the preliminary plat is null and void, and the developer

must start all over again. *Id.* Accordingly, the Court erred by failing to rule the preliminary map null and void (Maps; Reports, pp. ; Minutes, pp. ; Transcript, pp.).

> The final subdivision plat **shall be prepared and submitted** to the Planning Commission by the subdivider **within 12 months** after the approval of the preliminary plat. If the final plat is **not** submitted to the Planning Commission within that timeframe, **preliminary approval shall be null and void** unless an extension of time is applied for and granted by the Planning Commission. Final plat approval may be given for any phase of a subdivision where phased development is clearly indicated on the preliminary plat; provided, however, that once the first phase of any final plat is recorded and 80 percent of the lots in that phase are sold, the subdivider has two years to receive approval and record the final plat for the next phase, using the subdivision regulations as they were approved at the time the preliminary plat for the first phase was recorded. This same timeframe shall hold consistent through the development process, but only for those phases which were shown on the preliminary plat.

Anderson County Code § 24-367(a) (*emphasis added*).

In conclusion, the map the developer now contends is the latest rendering of Anderson Reserve is a map rendered by a different firm (Maps; Reports, pp. ; Minutes pp. ; Affidavits, pp.) and presents a different number of lots and a different configuration of the proposed subdivision. This is the kind of major change that must by ordinance be approved by the subdivision administrator to comply with all 18 provisions of § 24-336 and likewise must be approved by the Commission itself. Accordingly, the Commission abused its discretion in basing its approval on the older, consequentially incorrect map and the Court's ruling should be reversed (Maps; Reports, pp. ; Minutes, pp. ; Transcript, pp. ; Order, pp.).

In conclusion, the Commission "reaffirmed" the old map dated March 21, 2024, that does not require protections for Graveyard Hill (Maps; Reports, pp. ; Minutes, pp. ; Transcript, pp.). Accordingly, the Commission's adoption of the January 14, 2025, motion violated state and local law and by adopting this Motion, the Commission decision was arbitrary and capricious, and an abuse of discretion. Without this Court's intervention and reversal of the Court's ruling upholding this decision, the Appellants will be immediately and irreparably impaired.

V. Because Spano & Associates, Inc. Is Neither the Owner of the Property Nor the Developer, Spano & Associates, Inc. Does Not Have Standing to Intervene.

On October 28, 2024, Spano & Associates, Inc. filed a Motion to Intervene in Civil Action Number 2024-CP-04-00975, (the second appeal).

The following day, October 29, 2024, the Planning Commission filed a Motion to Dismiss. In its motion, **Spano & Associates, Inc**. told the Court that it was "the owner of the property in dispute." *Id*., p. 2. **Spano & Associates, Inc**. also told the Court that because "the Court's Order encouraged the Commission to grant Plaintiffs access to Spano's property, its interest in the appeal became evident." *Id*., p. 3. **Spano & Associates, Inc**. further told the Court, "Spano, as the landowner, has an undeniable interest in the property which is the subject of the action." *Id*., p. 4.

Spano & Associates, Inc. also told the Court,

> If Spano cannot intervene, disposition of the action may impair or impede its ability to **protect its interest in the property**, especially under the present circumstances where the Court is considering granting Appellants and its third-party affiliates access to the property to establish whether graves exist on the property. Such a decision could drastically impair the value and potential use of **Spano's property**. Thus without intervention, Spano cannot adequately **protect its interest in the property**.

Id., p. 3. (*Emphasis added*).

Throughout the pleadings in that case, Spano & Associates, Inc. repeatedly told the Court that it was "the **owner** of the property in dispute." *Id*., p. 2. The Circuit Court relied on the representations of Spano & Associates, Inc., and entered a Form 4 Order February 7, 2025, granting the Motion to Intervene. The Circuit Court also granted the Planning Commission's Motion to Dismiss, because the Appellants had failed to name and serve Spano & Associates, Inc. as a party to that appeal.

Spano & Associates, Inc. wrote a 9- page letter to the Court dated November 18, 2024, in which it told the Court, "Spano & Associates Inc. ('Owner'), owns the Property at issue in the Appeal (the 'Property')." *Id.*

Based on these representations of **Spano & Associates, Inc**., the Circuit Court entered a Form 4 Order February 7, 2025, granting the Motion to Intervene. On February 21, 2025, the Circuit Court issued a formal Order, finding that "Spano was the developer of the Project **and the fee-simple owner** of the real property." *Id.,* p. 1 (*emphasis added*).

The Circuit Court also granted the Planning Commission's Motion to Dismiss because the Appellants had failed to name **Spano & Associates, Inc.** as a party to the appeal. *Id.,* pp. 3-4. The Court recited that **Spano & Associates, Inc.** "was a party to the proceeding before the Commission because it was the applicant for the preliminary plat approval of the Project" *Id.* The Court found **Spano & Associates, Inc**. to be a "necessary party" and ruled Appellants failed to serve **Spano & Associates, Inc.** Accordingly, the Court found that the Appellants had failed to make a timely filing because, "Notice of appeal to the Circuit Court must be served on all parties within 30 days after receipt of the written notice" of the decision from which the appeal is taken. The Circuit Court granted the Motion to Dismiss for failure to serve **Spano & Associates, Inc.**

On February 13, 2025, Appellants filed this third appeal, from the decision of the Planning Commission in January 2025. Having learned from their earlier dismissal, and relying upon the misrepresentations of Spano & Associates, Inc., Appellants named Spano & Associates, Inc. as a Defendant, in addition to the Anderson County Planning Commission. Appellants alleged, "**Spano & Associates, Inc**. is a corporation existing under the laws of the State of South Carolina and **is the owner of the real property in dispute** and has been involved in the underlying meetings of

the Planning Commission and the litigation described herein" (Complaint and Appeal from Anderson County Planning Commission, par. 3).

In its Answer, **Spano & Associates, Inc**. stated following:

> **Spano admits** the allegations of paragraph 3 only insomuch as they allege **that Spano is** a corporation and **the owner of the Property**, and that Spano has had certain involvement with prior Planning Commission meetings relating to the Property and a prior appeal filed by Plaintiffs, which concerned the same issues on appeal in this action. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of any remaining allegations of paragraph 3 and therefore denies the same.

Id., par 3. (emphasis added).

In its Answer, "Spano admits that it retained a qualified archeologist to investigate the Property and prepare a report concerning the possible existence of gravesites." *Id.,* par. 25. Spano also admitted, "that, in the First Appeal, the Court held a status conference via WebEx on October 25, 2024, where counsel of Spano confirmed that it had issued a trespass notice to counsel for Plaintiffs." *Id.,* par. 30.

Spano & Associates, Inc. also admitted "that it filed a Motion to Intervene in the First Appeal on or about October 25, 2024." *Id.,* par. 31. Spano admitted, "that Kimberly Nagle, M.S., RPA, of S&ME, **working for Spano**, prepared a report dated December 7, 2024." *Id.,* par. 33 (emphasis added).

In its prehearing brief, filed June 1, 2025, **Spano & Associates Inc**. argued that it was "a **property owner** who has gone above and beyond what is required by the law." *Id.*, p. 1 (*emphasis added*). In all these pleadings and representations, **Spano & Associates, Inc**. repeatedly represented to the Circuit Court that it was the **owner and developer** of the property at issue.

Then, on June 5, 2025, the Court issued a Form 4 Order, and on June 10, 2025, a formal Order **ruling** against the Appellants and **in favor of Spano & Associates, Inc.** and Anderson County Planning Commission.

Appellants then filed Notice of Appeal to the Court of Appeals naming Spano & Associates, Inc. as a party to the appeal.

V. This Court Should Deny the Motion to "Correct the Record" Because the Movant Lacks Standing and the Matter is More than a Clerical Error.

On August 6, 2025, **two months after the ruling** and after all of the preceding litigation in the Circuit Court, **Spano & Associates, Inc**. filed a motion to "correct the record under Rule 60 (a), SCRCP," allegedly to correct a "clerical mistake." After all this time, and contrary to all its prior representations, **Spano & Associates, Inc.** now tells the Court that it is **not** the owner of the property; but rather **another entity** registered as "**Spano & Associates, Asheville, LLC**" owns the property. The Intervenor-developer, **Spano & Associates, Inc.,** moved the Court to **change the identity** of the developer and owner of the property from **Spano & Associates, Inc**. to **Spano & Associates Asheville, LLC**.

Nevertheless, Defendant **Spano & Associates, Inc**. has filed a series of motions in the Circuit Court that **relate to the case which is on appeal** to the Court of Appeals.

A. Replacing the Owner and Developer Spano & Associates, Inc. with Spano & Associates Asheville, LLC Exceeds Correcting a Clerical Error.

Rule 60(a) states:

> **(a) Clerical Mistakes.** Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, leave to correct the mistake must be obtained from the appellate court. The ending of a term of court or departure from the circuit shall not operate to deprive the trial judge of jurisdiction to correct such mistakes. A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.

Id.

Appellants respectfully argue that changing the developer from **Spano & Associates, Inc**. to **Spano & Associates Asheville, LLC** exceeds correcting a "clerical error."

Attorneys for **Spano & Associates, Inc.** participated in multiple videoconferences with the Court and other counsel in the second appeal to the Circuit Court. This case, the third appeal, had been pending for many months. The pleadings in the case at bar demonstrate that this change exceeds a mere clerical error. **Spano & Associates, Inc**. now comes before this Court and reveal that another corporation owns the real estate at the center of this case.

This revelation does not correct a mere clerical error, but rather represents a **major, substantive change to the parties litigating this matter** which has significant legal consequences for the case and for the other motions also filed by **Spano & Associates, Inc**. Under S.C. law, this exceeds a mere clerical error.

B. An Intervenor Must Have Standing at the Time of the Motion to Intervene.

Spano & Associates, Inc. argues that it need not plead nor prove standing (Reply Memorandum). However, Spano & Associates, Inc. **moved to intervene** in the second appeal, and if it would be an intervenor, it must plead and prove standing. *Kiawah Resort Associates, L.P. v. Kiawah Island Community*, 421 S.C. 538, 808 SE2d 521 (2017).

> "However, **a party must have standing to intervene** in an action pursuant to Rule 24, SCRCP." *[Ex parte Gov't Emp.'s Ins. Co. v. Furr*, 373 S.C. 132, 138, 644 S.E.2d 699, 702 (2007)]. "A party has standing if the party has a **personal stake** in the subject matter of a lawsuit and is a '**real party in interest**.' " *Id*. "A real party in interest ... is one who has **a real, actual, material or substantial interest** in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action." *Id*. (quoting *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994)).

Kiawah Resort Associates, L.P. v. Kiawah Island Community, 421 S.C. 538, 552, 808 SE2d 521, 528 (2017) (emphasis added). *See also, Ex parte, Government Employee's Ins. Co.,* 373 S.C. 132, 138, 644 S.E.2d 699, 702 (2007). If Spano and Associates, Inc. is not the owner of the property,

it does not have "a personal stake in the subject matter of the lawsuit," it does not have "a real, actual, material or substantial interest in the subject matter of the action," and it is not a "real party in interest." *Id*.

Further, if Spano & Associates, Inc. is **not** the owner of the property, it does not have **standing** to move the Court for anything, including its several motions filed in **this case**.

C. Since Spano & Associates, Inc. Was not the Owner or the Developer, it Lacks Standing to Litigate.

Spano & Associates, Inc. filed a Motion for expedited hearing, a motion to lift the automatic stay, and a motion for an order requiring Appellants to post a $7.5 million bond during the appeal. The Planning Commission did not file these Motions; only **Spano & Associates, Inc**. However, if **Spano & Associates, Inc**. is **not** the owner of the property, **Spano & Associates, Inc**. does not have **standing** to move the Court for an expedited hearing, to lift the automatic stay, or to request a bond. It does not have standing to litigate. It simply has no legitimate role in this litigation. Accordingly, the Court granted these motions in error (Orders).

If a party must plead and prove standing to be an intervenor, it must also plead and prove standing to file a motion. Because Spano & Associates, Inc. is not the owner of the property, it lacks standing to make **any** motion in this case. It simply has no legitimate role in this litigation. Furthermore, in its Motion to Intervene, and in its proposed Answer in the prior civil action, number 2024-CP-04-00975 **Spano & Associates, Inc**. did not state where it was incorporated, or where it was authorized to do business.

In response, a search by the undersigned attorney at the South Carolina Secretary of State's website disclosed the existence of **Spano & Associates Asheville, LLC**, a Florida corporation **(Exhibit 1)** and **Spano & Associates of Greenville, LLC**, a South Carolina corporation **(Exhibit 2)**, but **no entity** in South Carolina named **Spano & Associates, Inc**.

In addition, in its Answer filed March 13, 2025, **Spano & Associates, Inc**. does **not** allege that it is a South Carolina corporation or authorized to do business in South Carolina (Answer, par. 3). Appellants also respectfully suggest that even if Spano and Associates Inc. does exist, or if it is authorized the business of South Carolina, **Spano & Associates, Inc**., not being the owner of the property, lacks standing to make any motion in this case.

D. The Court May not Correct a Misnomer, When the Misnomer Replaces a Party with Another Corporation.

Changing the identity of the corporate entity amounts to a major, substantive change that has significant legal consequences for the case and for all the motions filed by Spano & Associates, Inc. This change is not the correction of a mere clerical error.

Defendant Spano & Associates, Inc. cited *Tri-County Ice and Fuel Co. v. Palmetto Ice Co*., 303 S.C. 237, 399 S.E.2d 779 (1990) and *Griffin v. Capital Cash,* 310 S.C. 288, 423 S.E.2d 143 (1992), and argued from those cases that the Court has discretionary authority to make nominal changes in the names or identities of the parties before the Court. However, other cases addressed the use of tradenames. In both cases, Appellants used the tradenames in litigation, and the defendants sought to avoid liability or judgments when they had been properly served, they were aware of the case, and they neglected to provide a defense. The Court in both cases ruled that the proper defendant had been served, and that the defendant could not escape liability because of the mere misnomer of the tradename in the name under which it was sued. Accordingly, those rulings are distinguishable from the case at bar.

A more analogous authority is an opinion from the South Carolina Supreme Court quoting 14 Corpus Juris at page 325:

> The misnomer of a corporation in pleadings and otherwise in judicial proceedings has the same effect as the misnomer of an individual. *** And when an action is brought against a corporation, the general rule is that where **the name is mistaken**

> **materially** and **substantially**, or where there is **such a variation that a different entity is indicated**, the suit **cannot** be regarded as against the corporation, and it **cannot** be affected by the proceedings or judgment therein;

Tunstall v. Lerner Shops, 160 S.C. 557, 159 S.E. 386 (1931) (*Emphasis added*).

Similarly, the South Carolina Supreme Court distinguished between the circumstances when "it is manifest from the pleadings that the corporation intended to be sued was the **same corporation** which was served and which answered" from the situation when "the amendment . . . was . . . so extensive as to substitute a **new defendant**." *Sentell v. Southern Ry. Co.,* 67 S.C. 229, 45 S.E. 155, 156 (1903) (*emphasis added*).

Spano & Associates, Inc. is **not the same entity** as Spano & Associates, Asheville, LLC. The website of the South Carolina Secretary of State's office discloses the existence of Spano & Associates Asheville, LLC, a Florida corporation, authorized to do business in South Carolina **(Exhibit 3),** but **no entity** in South Carolina such as Spano & Associates, Inc. However, the website of the Florida Secretary of State discloses the existence of Spano & Associates, Inc. **(Exhibit 4).** Accordingly, these are two separate and distinct corporations.

In the case at bar, the misidentification of the corporate entity is not a mere misnomer. Instead, "a different entity is indicated." Accordingly, "the suit cannot be regarded as against the corporation, and it cannot be affected by the proceedings or judgment therein." *Id.*

E. When a Party is Misnamed, It Has a Duty to Plead the Misnomer in Abatement and Notify the Court and Other Parties of the Misnomer.

When a corporation is sued by the wrong name it has a duty to plead the misnomer and notify the Court and the other parties. "[B]ut a mere misnomer of a corporation defendant in words and syllables is immaterial, and a judgment in the action **will bind** it if it is duly served with process or appears and **does not plead the misnomer in abatement**." *Tunstall v. Lerner Shops*, 160 S.C. 557, 159 S.E. 386 (1931) (*Emphasis added*).

Here, Spano & Associates Inc. not only failed to plead the misnomer in abatement. It **initiated** the misnomer and **repeated** the misinformation.

Spano & Associates, Inc. has participated in the second and third appeals, misrepresenting an ownership interest in the property, when it has no legal or equitable interest in the property whatsoever.

If **Spano & Associates, Inc**. is **not** the owner or the developer and has not been during this entire litigation process, as now revealed, then changing the identity of the developer to **Spano & Associates Asheville, LLC** is **not** a mere clerical error appropriate for a motion to remedy. It's the identification of a completely **different entity** as the developer and owner of the property and the Court's rulings on its motions below were issued in error. In conclusion, this current motion to the Court is not suitable for a motion under Rule 60(a). If **Spano & Associates, Inc**. is **not** the developer, then it does not have standing to move the Court on any of the motions below or before this Court.

CONCLUSION

When the Anderson County Planning Commission "reaffirmed" the old map, the Planning Commission approved the wrong drawing and its approval is void under S.C. Code Ann. § 16-17-600 and Chapter 24 of the Anderson County Ordinances. When the Planning Commission "reaffirmed" the old map, the Planning Commission failed to protect burial grounds and remains and violated S.C. Code Ann. § 27-43-10 ff and Chapter 24 of the Anderson County Ordinances. When the Planning Commission failed to hold a hearing on the plan and failed to adopt a map that protected the graves, the Planning Commission violated the Chapter 24 of the Anderson County Ordinances.

Finally, when a company is neither the owner of the property nor the developer, that company lacks standing to intervene, and changing to a different corporation is not a motion to correct a "clerical error." Accordingly all motions granted to this entity without standing are in error.Coun

WHEREFORE, Appellants pray the Court to reverse the judgment of the Circuit Court and remand to the Circuit Court for further proceedings.

Respectfully submitted,

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