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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 Reply Brief

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INTRODUCTION

The Anderson County Planning Commission abused its discretion by allowing a development, Lawton Estates, to be built in Pendleton on Rivoli Plantation with its “Graveyard Hill,” without confirming and protecting grave sites of enslaved individuals. Judge Lawton McIntosh ruled:

The issue of the existence of slave graves in their destruction is an important issue that should not be effectively discounted and not considered by planning commissions. In this case, when presented with evidence of the possible existence of slave graves, the Anderson County Planning Commission’s required nothing from the developer to determine whether graves exist.

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.

Order entered August 30, 2024, Case Number 2024-CP-04-00975.

Appellants Hubert N. Smith, Jr. and Stanley Hix seek to prevent the Anderson County Planning Commission from abusing its discretion under its governing ordinances and S.C. law, and challenge the Circuit Court’s ruling in error affirming that decision.

Appellants bring this matter of public importance on behalf of Anderson County citizens and descendants of enslaved African Americans buried in and around “Graveyard Hill” in what was once Rivoli Plantation, and seek guidance for citizens of South Carolina facing similar abuses of discretion in development near such sites (Complaint) (R. p.).

ARGUMENT

I. The Anderson County Planning Commission Abused its Discretion in Approving the Development Over Potential Burial Grounds in Spite of the State Archeologist's Review of Initial Ground Penetrating Radar ("GPR") and His Recommendation for Wider Ground Penetrating Radar to More Thoroughly Identify and Rule Out Locations of Burial Grounds.

A. Both the Commission and Developer Avoid Any Use of the Terms "Ground Penetrating Radar" or the "State Archeologist" and Exclude the Results and Recommendations from the Commission's Public Record.

Respondents, the Planning Commission and the Developer, avoid using the term "ground penetrating radar" (GPR), or any reference to the Appellant's report of its GPR testing. They also ignore the results by the State Archeologist identifying burial grounds and recommending expanded GPR testing (Motion; Memoranda and Exhibits; Order, Report; Transcript; R. pp.).

There is a reason for this omission: The Developer never conducted GPR testing by persons skilled in that service or asked the State Archeologist to review GPR testing. Instead, the Developer conducted testing by engineers who typically search for utility lines and pipes, and used reviewers who do not serve in the State Archeologist's office (Motion, Memoranda, Exhibits, Reports, Order, Transcript). Not only have the Commission and Developer avoided GPR and State Archeologist review in practice and in their appellate arguments, but they also buried these records from the public county record, but the news media has reported on the GPR and State Archeologist (Motion, Memoranda, Reports, Transcripts, Order, R. pp.).

As a result, the Court erred in affirming the Commission approval, by which it abused its discretion by approving the Developer's Preliminary Plat (which shows development over these burial grounds) in spite of the GPR results and formal State Archeologist's report (Motion, Memoranda, Reports, Transcripts, Order, R. pp.). The report concluded a high likelihood of burial grounds in the limited areas tested and recommended wider GPR testing, which was never

done before the Planning Commission approved the preliminary plat (Motion, Memoranda, Reports, Transcripts, Order, R. pp.).

B. The Commission's Approval of the Preliminary Plat Abused its Discretion Because it Failed to Satisfy South Carolina's Public Policy of Respect and Protection of Burial Grounds as Demonstrated in Common Law and Criminal Statutory Law, by Not Requiring Additional Ground Penetrating Radar as Recommended by the State Archeologist to Expand the Initial Targeted GPR.

Instead of refuting substantively Appellants' common law authorities showing Respondent Commission abused its discretion in light of South Carolina's public policy and presumption for respect and protection from disturbance of burial grounds, the Commission and Developer assert that stating this principle and citing the supporting authorities are a new issue on appeal (Appellants' Brief; pp. ; Respondents' Briefs, pp. (Motion, Memoranda, Exhibits, Reports, Transcripts, R. pp.).

The protection of burial grounds has been in this case from the beginning. In the Complaint and Appeal from the Anderson County Planning Commission, filed February 13, 2025, that approved the January 14, 2025, decision of the Anderson County Planning Commission, Plaintiffs alleged, "This action raises issues of great public importance, namely the unlawful actions of public officials and the proper legal treatment of burial grounds." *Id.*, par. 7, (Emphasis added).

Plaintiffs further alleged, "The Plaintiffs appeared at the December 2023 meeting and notified the Commission that there are slave graves on the property." *Id.*, par. 13.

Plaintiffs further alleged, "The Commission was presented 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 graves of former slaves on the Property that the developer had not addressed." *Id.*, par. 20.

Plaintiffs further alleged, “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 developer failed to comply with the statutory prerequisites for dealing with graves and burial sites.” *Id.*, par. 21-22.

Plaintiffs alleged, “Nevertheless, the S&ME Report concluded that ‘the area marked in Figure 19, the landform behind the barn, was where the burials were located. This area should be fenced and avoided during the ground disturbing and construction activities.’ Report, page 3.” *Id.*, par. 27.

Throughout this action, Appellants’ have repeatedly argued the immense significance of the respect and protection of these burial grounds (Complaint, Motion, Memoranda, Exhibits, Transcripts, Reports, R. pp.). Appellants’ brief cites authorities (caselaw and criminal statutory law) that demonstrate this public policy and how the Commission failed to follow it (Appellant’s Brief, pp.).

Furthermore, Respondent Developer wrongly contended that Appellants cited no authority (*see* Appellants’ Brief, pp.) for the principle that South Carolina common law and statutory law require respect and protection of burial grounds (Respondent Developer’s Brief, pp. ; Appellants’ Brief pp.).

Appellants argued that South Carolina law recognizes this public policy of continuing respect and protection and has long recognized a continuing “sentiment of humanity” that runs with the land holding burial grounds. (Appellant’s Brief, pp.) *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. [...] 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, Appellants supported its contention that the Commission abused its discretion (Appellant’s Brief, pp.) by failing to follow South Carolina’s public policy of respect and protection by quoting the following from *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)), which **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.

Appellants cited additional South Carolina cases 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).

More recently, the S.C. Supreme Court in *Cemetery Ass’n v. Elliott* ruled,

This review of principles of law governing public cemeteries reveals that merely because an individual holds fee title to the property, he does not have the exclusive right to control the land. For the reasons reflected above, the public, and specifically the heirs and descendants of the people buried on the property, have substantive rights in Huxfield Cemetery. Whether the right of an heir to visit a cemetery is considered an easement, a license, or a privilege, it cannot be extinguished by a subservient fee owner through a conveyance to another.

Huxfield Cemetery Ass’n v. Elliott, 388 S.C. 565, 698 S.E. 2d 591 (S.C. 2010) (*quoting* Am. Jur.2d Cemeteries §38. “Furthermore, this right is a real right, not a servitude or usufruct, but an implied contractual relationship that binds the owner irrevocably.” *Id.* (*quoting* *Faust v. Mitchell Energy Corp.*, 437 So.2d 339, 342 (La.App. 1983).

Appellants also cited statutory law to show that the Commission failed to follow S.C. public policy of respect and protection of burial grounds (Appellant’s Brief, pp.). 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).

C. Respondents Failed to Respond Substantively to Appellants' Authorities (both Case Law and Criminal Statutory Law) that Approving the Preliminary Plat in Spite of the GPR and State Archeologist Report Violated the Public Policy of Respect and Protection for Burial Grounds.

Respondents failed to respond substantively to Appellants' authorities (both case law and criminal statutory law) that approving the preliminary plat in spite of the GPR and State Archeologist Report violated the public policy of respect and protection for burial grounds (Appellants' Brief, pp. ; Respondent Developer's Brief, pp. ; Respondent Commission's Brief, pp.). Accordingly, the Commission and Developer abandoned its substantive response to Appellants' case law and statutory authorities by failing to discuss this public policy in more than a short, conclusory statement.

[A]n issue is deemed abandoned on appeal and, therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority. *Bochette v. Bochette*, 300 S.C. 109, 386 S.E.2d 475 (Ct.App.1989); *Matthews v. City of Greenwood*, 305 S.C. 267, 407 S.E.2d 668 (Ct.App.1991).

Fields v. Melrose Ltd. Partnership, 312 S.C. 102, 439 S.E.2d 283 (S.C. App. 1993).

D. This is not a New Issue on Appeal. .

Appellant's statement of South Carolina Public Policy for respect and protection of burial grounds and supporting authorities (S.C. caselaw and statutory law) continues the argument from below that the Commission's approval of the preliminary plat abused discretion and by failing to protect the burial grounds with additional ground penetrating radar and State Archeologist Review. Appellants argue below that Respondents' actions and rulings fail to protect and respect the burial grounds. (Complaint, Motion, Memoranda, Transcripts, R. pp.).

E. Respondents Fail to Distinguish Between an Issue and an Argument.

Black's Law Dictionary defines legal "issue."

issue n. (16c) 1. A point in dispute between two or more parties.

• In an appeal, an issue may take the form of a separate and discrete question of law or fact, or a combination of both. "In federal civil procedure, an issue is a single, certain, and material point arising out of the allegations and contentions of the parties; it is matter affirmed on one side and denied on the other, and when a fact is alleged in the complaint and denied in the answer, the matter is then put in issue between the parties."

Issue, BLACK'S LAW DICTIONARY (12th ed. 2024) (emphasis added). The authority showing South Carolina's public policy for respect and protection of burial grounds supports Appellants' issue that Respondents abused their discretion by failing adequately identify the burial grounds (Complaint, Memoranda, Exhibits, Transcripts, Reports, R. pp.). The authority is distinct from the issue.

Black's Law Dictionary defines legal "argument:"

argument (14c) 1. A situation in which two or more persons expressly disagree and dispute one another's positions, often vehemently. 2. A statement that attempts to persuade by setting forth reasons why something is true or untrue, right or wrong, better or worse, etc.; esp., the remarks of counsel in analyzing and pointing out or repudiating a desired inference, made for the assistance of a decision-maker. 3. The act or process of attempting to persuade. See oral argument; opening statement; closing argument."[W]e may define ... an argument as a course of reasoning which firmly establishes a matter about which there is some doubt." Cicero, *De Inventione*; *De Optimo Genere Oratorum*; *Topica* 387 (H.M. Hubbell trans., 1949; repr. 2006).

Argument, BLACK'S LAW DICTIONARY (12th ed. 2024) (emphasis added). Appellants have argued and "set forth reasons" that the Commission abused its discretion in approving the preliminary plat in spite of the GPR findings and State Archeologists recommendation for wider GPR to fully identify the burial grounds (Memoranda, Exhibits, Reports, Transcripts, R. pp.). This additional authority supports the continuing argument that Respondents abused their discretion, disregarding this notice and (Appellants' Brief, pp. , Memoranda, Exhibits, Reports, Transcripts, R. pp.).

Black's Law Dictionary defines legal "authority:"

"5. A source, such as a statute, case, or treatise, cited in support of a legal argument (the brief's table of authorities)." *Authority*, BLACK'S LAW DICTIONARY (12th ed. 2024) (emphasis added). The cases and criminal statutory law supporting South Carolina's public policy to respect and protect burial grounds are "authority" supporting the legal argument that the Commission abused its discretion by failing to respect and protect the burial grounds is the public policy of South Carolina with additional GPR and review by the State Archeologist after the narrow initial GPR and report (Memoranda, Exhibits, Reports, Transcripts, R. pp.).

II. APPELLANTS PROPERLY PRESERVED THE ISSUE OF SPANO'S LACK OF STANDING TO INTERVENE AND MAKE MOTIONS IN THE CASE.

Spano & Associates, Inc. argues that the Appellants failed to properly preserve as an issue for appeal Spano's failure to possess standing to intervene in the case and standing to file motions in the case (Initial Brief of Respondent Spano and Associates, Inc., pp. 22-27). Respondents are in error.

On August 6, 2025, Spano & Associates Inc. moved the Circuit Court to "correct the record" under Rule 60 (A) SCRCPP (Spano and Associates Inc.'s Motion to Correct the Record under Rule 60(A), SCRCPP). Spano **admitted** that it had litigated for many months in the Circuit Court under the name Spano & Associates, Inc., when the true owner of the property was a different entity named Spano & Associates Asheville, LLC. (*Id.* pp. 22-23).

In response to Spano's Motion, on August 25, 2025, the Appellants filed their opposition. (Plaintiffs' Memorandum in Opposition to the Motion to Correct the Record and Motion to Lift the Automatic Stay and Post a Bond," with Exhibits 1 through 6).

The next day, August 26, 2025, Spano and Associates, Inc. filed its Reply (“Spano and Associates, Inc.’s Reply in Support of Spano’s Motion to Correct the Record and Motion to Lift the Automatic Stay and Post a Sufficient Bond.”)

On August 27, 2025, Plaintiffs filed their Reply: (“Plaintiffs’ Reply Memorandum in Opposition to the Motion to Correct the Record and the Motion to Lift the Automatic Stay and Post a Bond.”)

Plaintiffs argued this issue at length. One of Appellants’ memoranda on this issue is 11 pages long, and the other is seven pages long. (Plaintiffs’ Initial Memorandum in Opposition to the Motion to Correct the Record) (Plaintiffs Reply Memorandum in Opposition to the Motion to Correct the Record). Everything that was argued before this appellate court had been presented to the Circuit Court. *Id.*

The Circuit Court did not issue a formal order ruling on this issue. It entered a Form 4 Order on August 27, 2025, the text which reads as follows:

DEFENDANTS SPANO & ASSOCIATES MOTION TO CORRECT THE RECORD IS GRANTED RETROACTIVELY. MR. MASSENGILL TO PREPARE A FORMAL ORDER. DEFENDANTS SPANO & ASSOCIATES MOTION FOR BOND IS UNDER ADVISEMENT. ALL PARTIES TO SUBMIT BRIEFS NO LATER THAN FRIDAY, AUGUST 29, 2025 AT 5:00 PM

(Form 4 Order entered August 27, 2025).

It is unfortunate that the Circuit Court did not provide more of its insight into its decision-making process, but everything that that the Appellants argued to the appellate court on this issue was previously presented to the Circuit Court, almost word for word. The issue was raised by the Appellants and ruled on by the Circuit Court. The Plaintiffs’ two memoranda to the Circuit Court, the Defendants’ two memoranda to the Circuit Court, and the subsequent ruling from the Circuit Court, were sufficient to preserve this issue for appeal.

[I]t is apparent from the record the trial court understood and ruled on Cone's objection to the State being allowed to argue the statute to the jury. "A trial court's opportunity to rule necessarily includes **both parties being aware of the nature of the objection** such that they may present their best arguments addressing *that* objection." *State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023) (citing *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012)). The objecting party must be **sufficiently clear in framing the objection**; however, the party is **not required to use the exact name of a legal doctrine** to preserve the issue. *Buist v. Buist*, 410 S.C. 569, 574-75, 766 S.E.2d 381, 383-84 (2014) (citations omitted). Appellate courts should not apply preservation rules "in a technical manner as if this is some sort of game of 'gotcha' elevating form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue." *Morales*, 439 S.C. at 609, 889 S.E.2d at 556 (citations omitted).

Cone v. State, 443 S.C. 487, 493-494, 905 S.E.2d 368, 372 (2024) (emphasis added).

Spano and Associates also argues that because the Appellants did not make a posttrial motion regarding this issue, the issue is not properly preserved for appeal. Again, Spano is in error. Because the Circuit Court ruled on an issue, it is not necessary to make a posttrial motion to preserve the issue for appeal.

Post-trial motions are **not necessary to preserve issues that have been ruled upon at trial**; they are used to preserve those that have been raised to the trial court but not yet ruled upon by it. *Hubbard v. Rowe*, 192 S.C. 12, 5 S.E.2d 187 (1939). Here, the trial court ruled on Seller's objections by expressly adopting Buyer's amortization schedule in its order. Consequently, it was unnecessary for Seller to make any post-trial motions.

Wilder Corp. v. Wilkie, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (emphasis added). The issue is properly preserved for appeal, and awaiting a decision.

III. THE CIRCUIT COURT'S DECISION TO ALLOW SPANO & ASSOCIATES, INC. TO CONTINUE TO LITIGATE, WHEN IT WAS NOT THE PROPERTY OWNER AND HAD NO STANDING WAS AN ABUSE OF DISCRETION.

Throughout this litigation, Spano & Associates, Inc. repeatedly misrepresented to the Circuit Court that it **was** the owner of the real estate at issue (Appellants' Initial Brief, pp. 23-26). It was **never** the owner of the property. Nor was it the developer. A separate corporation bought the property, while the litigation was ongoing (Appellants' Initial Brief, p. 26). Nevertheless,

Spano & Associates Inc. told the Circuit Court, time and again, that it was the owner. This continued through the end of the litigation in the Circuit Court

On June 1, 2025, Spano & Associates Inc. argued to the Circuit Court that it was the owner of the property (Spano & Associates, Inc.'s Prehearing Brief filed June 1, 2025).

On June 5, 2025, the Circuit Court issued a Form 4 Order in favor of Spano & Associates Inc., based on its representations (Form 4 Order filed June 5, 2025).

On June 10, 2025, the Circuit Court issued a formal order in favor of Spano & Associates Inc., based on its representations (Order entered June 10, 2025).

July 28, 2025, Appellants filed a Notice of Appeal to the Court of Appeals (Notice of Appeal filed July 28, 2025).

Of August 6, 2025, Spano & Associates Inc. filed in the Circuit Court a "Motion to Correct the Record" under Rule 60(A), alleging a "clerical mistake" (Spano & Associates, Inc.'s Motion to Correct the Record under Rule 60 (A), SCRPC). The alleged "clerical mistake" was that they never did own the property; another corporation did. This is not a "clerical error." If Spano & Associates Inc. was not the owner of the property, it did not have standing to intervene in the case. A party must have standing to intervene. *Kiawah Resort Associates, L.P. v. Kiawah Island Community*, 421 S.C. 538, 808 SE2d 521 (2017).

Spano and Associates Inc. did not have standing to file a motion for an appeal bond, or to file to set aside the automatic stay, or make any other motion in the litigation. It simply was not a legal participant in the litigation. It had no standing. To allow the substitution of parties from one corporation that was not the owner of the property, to another, that actually did own the property was an abuse of discretion, especially after the litigation was concluded.

IV. THE CIRCUIT COURT'S DECISION TO ALLOW SPANO & ASSOCIATES ASHEVILLE, LLC TO REPLACE SPANO & ASSOCIATES, INC. AS A PARTY IN THIS ACTION WAS AN ABUSE OF DISCRETION.

Spano & Associates Inc. asked the Circuit Court to make a retroactive substitution of another corporation, Spano and Associates Asheville, LLC, for Spano & Associates Inc., and the Circuit Court granted the motion via a Form 4 Order, and contrary to the arguments of the Appellants (Form 4 Order entered August 27, 2025).

This retroactive substitution represents a major substantive change of the parties litigating this matter. It is not the correction of a mere “clerical error;” and to allow the wholesale, retroactive, substitution of one corporate party for another was an abuse of discretion. As the South Carolina Supreme Court ruled,

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*) (quoting 14 *Corpus Juris* at page 325).

Spano & Associates, Inc. is not the same entity as Spano & Associates, Asheville, LLC. 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.* (*emphasis added*).

In conclusion, when a company is neither the owner of the property, nor the developer, that company lacks standing intervene in the case; and a motion to switch that party with a different corporation is not a motion to correct a “clerical error.” Accordingly, Spano & Associates Inc., did

not have standing, and all motions granted to Spano & Associates, Inc. were granted in error, and must be reversed.

CONCLUSION

In summary, the Anderson County Planning Commission abused its discretion by failing to follow South Carolina's public policy for respect and protection of burial grounds by approving development in disregard of initial GPR results and the State Archeologist's review and report recommending wider GPR testing before plat approval (Memoranda, Exhibits, Transcripts, Order, R. pp.) The Commission also abused its discretion in 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 GPR results and State Archeologist recommendations as well as the updated map which identified a high probability of GPR anomalies (and relying upon a report which did not rely upon GPR or 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 violations, but also irreparable harm to the gravesites and remains (Maps; Reports, pp. ; Minutes, pp. ; Affidavits, pp. ; Transcript, pp.).

Deacon Albert Simmons of New Holly Missionary Baptist Church testified 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 initial GPR and 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.

Appellants pray the Court to rule that the Court erred in affirming the Planning Commission's abuse of discretion in its approval of the development in spite of South Carolina's public policy of respect and protection of burial mounds by its disregard of the initial GPR findings and State Archeologist's report finding strong likelihood of burial grounds and recommending wider GPR testing before finalizing a plat and to remand this to the Planning Commission in light of the ruling (Memoranda, Exhibits, Report, Order, R. pp.).

Respectfully submitted,
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SC Court of Appeals

Certificate of Service

The undersigned attorney hereby certifies that he served a copy of the foregoing Appellants' Initial

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