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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

Appellate Case No. 2025-001505
Case No. 2025-CP-04-00328

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

v.

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

.....

RECORD ON APPEAL
VOLUME I

.....

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ELECTRONICALLY FILED - 2024 Aug 30 12:51 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	IN THE 10TH CIRCUIT
Hubert N. Smith, Jr. and Stanley Hix, Plaintiffs,	)	CASE NO: 2024-CP-04-00975
v.	)	**Order**
Anderson County Planning Commission Defendant.	)	

Plaintiffs appeal Anderson County Planning Commission's preliminary approval of Phase I & II of Anderson Reserve. Plaintiffs assert the following causes of action:

1) Failure to comply with the statute related to burial grounds,

2) Violation of the Freedom of Information Act,

3) Violation of the Freedom of Information Act (public meeting/published agenda),

4) Commissioner's conflict of interest,

5) Violation of Anderson County ordinance, &

6) Failure to fulfill the duty to vote

DISCUSSION

> "By statute, the trial court must uphold a decision by the Planning Commission unless there is no evidence to support it." . . . "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*).

The Planning Commission staff presented to the developer what is characterized as an "anecdotal comment" regarding the existence of graves and/or gravesites on the subject property.

[Anderson County Planning Commission Meeting Transcript, April 19, 2024, p.15]. There is no evidence in the record that the Planning Commission required anything of the developer to confirm whether the information was true.

Plaintiff Stanley Hix presented evidence by way of affidavit from a previous owner of the property that he was shown by his father the existence of slave graves in particular areas of the subject property.

The Planning Commission again required nothing of the developer to answer whether slave graves are present on the property. Upon being questioned by the Court, Plaintiffs agreed to bear the cost of testing to determine if grave sites exist.

The issue of the existence of slave graves and 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 required nothing from the developer to determine whether the 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.

Accordingly, the Court reverses the Planning Commission's approval of Phases I & II of Anderson Reserve and remands this matter back to the Commission to consider and establish requirements for the developers to establish whether slave graves exist on the property. Although the Court cannot require the Commission to do so, it urges the Commission to consider Plaintiff's offer to pay for the cost of testing and to allow Plaintiffs and their affiliates access to the premises for the purposes of doing so.

Plaintiff's first cause of action is held in abeyance.

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Plaintiff's causes of action 2-6 are denied. Plaintiff's cause of action number two (2) is denied as the meeting was properly noticed. Cause of action number three (3) is denied as the transcripts reflect public discussion and vote. Cause of action number four (4) is denied as the Commissioner in question is not an employee of AnMed. Cause of action number five (5) is denied as no violation was proven, and cause of action number six (6) is denied, as the same was not established.

Plaintiff's counsel is to prepare a formal order.

SO ORDERED.

_____
Lawton McIntosh, Circuit Judge

August _____, 2024

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Anderson Common Pleas

Case Caption: Hubert N Smith Jr. , plaintiff, et al VS Anderson County Planning Commission

Case Number: 2024CP0400975

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP0400975

Hubert N. Smith et al
PLAINTIFF(S)

Anderson County Planning Commission
DEFENDANT(S)

Submitted by: R. Lawton McIntosh	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

THIS MATER WAS ORIGINALLY HEARD BEFORE THE COURT ON AN APPEAL FROM THE ANDERSON COUNTY PLANNING COMMISSION. GENERALLY, THE COURT'S AUTHORITY IS LIMITED ON THESE APPEALS (TOWN OF HOLLYWOOD V. FLOYD, 403 S.C. 466, 476, 744 S.E.2D 161, 166 (2013)). HOWEVER, THIS CASE INVOLVED CLAIMS THAT THE SUBJECT DEVELOPMENT COULD ENCROACH ON SLAVE GRAVES POSSIBLY EXISTING ON THE SUBJECT PROPERTY AS THE PREMISES IS IN THE SITE OF A FORMER PLANTATION. THE SITE'S FORMER OWNER'S SON FILED AN AFFIDAVIT, INTER ALIA, THAT HIS FATHER HAD SHOWN HIM PLACES ON THE PREMISES WHERE SLAVE GRAVES WERE ALLEGEDLY LOCATED.

BECAUSE OF THE IMPORTANCE OF THIS ISSUE, THE UNDERSIGNED FELT IT WAS IMPORTANT TO DETERMINE WHETHER OR NOT SLAVE GRAVES WERE ON THE PROPERTY. ACCORDINGLY, THIS COURT GRANTED THE APPELLANT AND HIS ARCHEOLOGICAL EXPERT ACCESS TO THE PROPERTY TO CHECK FOR SLAVE GRAVES. THE COURT GAVE APPELLANT A SHORT WINDOW TO DO SO. APPELLANT AGREED TO PAY THE COSTS FOR THE INVESTIGATION. AT THIS TIME, THE DEVELOPER DID NOT OBJECT TO APPELLANT'S REPRESENTATIVES COMING ONTO THE PREMISES NOR DID THE DEVELOPER MENTION ANY TESTING IT HAD PERFORMED FOR THE EXISTENCE OF SLAVE GRAVES.

ON THE DAY OF APPELLENT'S SUPPOSED ENTRY ONTO THE PREMISES, THE DEVELOPER BY AND THROUGH ITS LEGAL REPRESENTATIVE ANNOUNCED THAT THE DEVELOPER HAD POSTED "NO TRESPASSING" NOTICES ON THE PROPERTY AND THAT APPELLANT AND/OR HIS REPRESENTATIVE WOULD BE ARRESTED IF THEY ENTERED THE PREMISES. THE DEVELOPER, FOR THE FIRST TIME, ANNOUNCED IT HAD CONDUCTED TESTING FOR THE EXISTENCE OF SLAVE GRAVES (APPELLANT'S REPRESENTIVE CLAIMS THAT THE PROCESS USED BY THE DEVELOPER WOULD NOT EFFECTIVELY DEMONSTRATE THE EXISTENCE OF SLAVE GRAVES).

ACCORDINGLY, UPON THE DEVELOPER'S PRONOUNCEMENT OF "NO TRESPASSING", THE COURT DETERMINED THAT THE BEST COURSE OF ACTION WOULD BE TO REMAND THIS MATTER TO THE ANDERSON COUNTY PLANNING COMMISSION WITH THE SUGGESTION THAT IT SHOULD REQUIRE SUCH TESTING AS TO DETERMINE WHETHER OR NOT SLAVE

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GRAVES ARE ON THE PREMISES. THIS SUGGESTIONS INCLUDES DETERMINING WHETHER THE DEVELOPER ACTUALLY TESTED FOR SLAVE GRAVES, WHETHER THE PROCESS USED WOULD YIELD THE BEST RESULTS, WHETHER THE AREA TESTED WAS SUFFICIENT, AND WHETHER APPELLANT AND ITS REPRESENTATIVE SHOULD BE ALLOWED ONTO THE PREMISES TO CONDUCT TESTING. DEVELOPERS MOTION TO INTERVENE TO BE DETERMINED ON REMAND.

MR. CARPENTER IS TO PREPARE A FORMAL ORDER.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX **Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**		
Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
		$
		$
		$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2155	
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2024 Nov 13 3:21 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

Anderson Common Pleas

Case Caption: Hubert N Smith Jr. , plaintiff, et al VS Anderson County Planning Commission

Case Number: 2024CP0400975

Type: Order/Form 4

S/R. LAWTON McINTOSH

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ELECTRONICALLY FILED - 2024 Nov 20 12:59 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	IN THE 10TH CIRCUIT
Hubert N. Smith, Jr. and Stanley Hix, Plaintiffs,	)	CASE NO: 2024-CP-04-00975
v.	)	**Order**
Anderson County Planning Commission, Defendant.	)	

This matter came before the Court on August 21, 2024, on Plaintiffs' appeal from the Anderson County Planning Commission.

Generally, the Court's authority on these appeals 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).

However, this case involved claims that the subject development could encroach on graves of enslaved persons, possibly existing on the subject property, as it is the site of a former plantation. That site's former owner's son filed an affidavit, stating *inter alia*, that his father had shown him places on the premises where graves of enslaved persons allegedly were located.

Because of the importance of this issue, the undersigned found it important to determine whether graves of enslaved persons were on the property. The Court found that the Planning Commission's failure to consider whether graves of enslaved persons exist, and failure to require

some affirmative action by the developer to determine whether graves of enslaved persons exist, was arbitrary and capricious, and the failure was an abuse of discretion.

The Court issued an Order on August 30, 2024.

September 9, 2024, the Planning Commission filed a Motion to Alter or Amend the Court's decision and included documents indicating that the developer had conducted testing for the presence of graves of enslaved persons. Appellant's representative asserts that the developer's process would not effectively demonstrate the presence of graves of enslaved persons.

Accordingly, this Court granted the Appellant and his archeological expert access to the property to search for graves of enslaved persons. The Court gave Appellant a short window of time to do so. Appellant agreed to pay the costs of the investigation. At this time, the developer did not object to Appellant's representatives coming onto the premises.

Just before Appellant's planned entry onto the premises, the developer's counsel told the Appellants that the developer had issued a "no trespassing" notice to the Appellants as to the property, and the developer indicated that if Appellants or their representatives entered the premises, they would be arrested.

Accordingly, upon the developer's pronouncement of the "no trespassing" notice, the Court determined that the best course of action would be to remand this matter to the Anderson County Planning Commission, with the suggestion that the Planning Commission should require adequate testing to determine whether graves of enslaved persons are on the premises. This suggestion includes determining the following:

1. whether the developer actually tested for graves of enslaved persons,
2. whether the process used would yield the best results,
3. whether the area tested was sufficient, and

ELECTRONICALLY FILED - 2024 Nov 20 12:59 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

4. whether Appellant and its representative should be allowed onto the premises to conduct testing.

CONCLUSION

The Planning Commission's Motion to Alter or Amend is **DENIED**.

This matter is **REMANDED** to the Planning Commission.

Developer's Motion to Intervene should be determined on remand.

SO ORDERED.

_____
R. Lawton McIntosh,
Circuit Judge Presiding

November ____, 2024

ELECTRONICALLY FILED - 2024 Nov 20 12:59 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

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Anderson Common Pleas

Case Caption: Hubert N Smith Jr. , plaintiff, et al VS Anderson County Planning Commission

Case Number: 2024CP0400975

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024 CP-04-00975

HUBERT N. SMITH JR. ET, AL.
PLAINTIFF(S)

ANDERSON COUNTY PLANNING COMMISSION
DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

PLAINTIFF MOTION TO INTERVENE IS GRANTED. DEFENDANT MOTION TO DISMISS IS GRANTED. ANDERSON COUNTY ATTORNEY TO PREPARE A FORMAL ORDER.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

ELECTRONICALLY FILED - 2025 Feb 07 8:45 AM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2025 Feb 07 8:45 AM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

Anderson Common Pleas

Case Caption: Hubert N Smith Jr. , plaintiff, et al VS Anderson County Planning Commission

Case Number: 2024CP0400975

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

ELECTRONICALLY FILED - 2025 Feb 07 8:45 AM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

ELECTRONICALLY FILED - 2025 Feb 21 9:20 AM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	CASE NO.: 2024-CP-04-00975
Hubert N. Smith, Jr. and Stanley Hix,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**ORDER**
	)	
	)	
Anderson County Planning Commission,	)	
	)	
Defendant.	)	
	)	

This matter came before the Court for hearings on the Motion to Intervene filed by the owner of the subject property and proposed intervenor, Spano & Associates, Inc. ("Spano"), on October 28, 2024, and the Motion to Dismiss filed by the Defendant Anderson County Planning Commission (the "Commission") on October 29, 2024. After reviewing the record and carefully considering the arguments of counsel, both Motions are granted and the appeal in this matter is hereby dismissed.

This is an appeal from the Commission's decision on April 9, 2024 (the "Decision") approving the preliminary plat submitted by Spano for its Anderson Reserve Development project (the "Project"). Plaintiffs allegedly own land in Anderson County near the Project. (Compl., ¶ 1). Plaintiffs did not name Spano as a defendant in their appeal (*see generally*, Compl.), despite that Spano was the developer of the Project and fee-simple owner of the real property underlying the Project. (*See* Mot. to Intervene and Mot. to Dismiss).

In their Complaint, Plaintiffs offered the following grounds to support their causes of action and basis for appeal: (1) "Failure to Comply with Statutes Related to Burial Grounds"; (2) "Violation of the Freedom of Information Act;" (3) "Commissioner Conflict of

Interest;" (4) "Violation of Andeson County Ordinance;" and (5) "Failure to Fulfill Duty to Vote." (Compl., ¶¶ 24-58).

On August 30, 2024, the Court filed an order dismissing all of Plaintiffs' causes of actions and grounds for appeal except for the first, which was "held in abeyance", and remanding the Decision back to the Commission with instructions to "consider and establish requirements for the developers to establish whether slave graves exist on the property." (August 30, 2024 Order, pp. 2-3). The Order also stated that, "[a]lthough the Court cannot require the Commission to do so, it urges the Commission to consider Plaintiff's offer to pay for the cost of testing and to allow Plaintiffs and their affiliates access to the premises for the purpose of doing so." (*Id*). Plaintiffs did not appeal the August 30, 2024 Order.

On September 9, 2024, the Commission filed a Motion to Reconsider the August 30, 2024 Order, pursuant to Rule 59, SCRCP (the "Rule 59 Motion"). On November 13, 2024, the Court issued a Form 4 Order concerning the Commission's Rule 59 Motion, instructing Plaintiffs' counsel to prepare a proposed formal order. The Court did not enter its formal order concerning the Commission's Rule 59 Motion until November 20, 2024.[1] Accordingly, when Spano filed its Motion to Intervene on October 28, 2024, this Court had not yet issued a final ruling on the Commission's still pending Rule 59 Motion. Therefore, I find that Spano's Motion to Intervene was made in a timely manner.

[1] The November 20, 2024 Order stated that the "the Court determined that the best course of action would be to remand this matter to the Anderson County Planning Commission, with the suggestion that the Planning Commission should require adequate testing to determine whether graves of enslaved persons are on the premises." (November 20, 2024 Order, p. 2).

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This finding is consistent with Rule 24(a), SCRCP, which states that "[u]pon timely application anyone *shall* be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction that is the subject of the action, and the disposition of the action may impair or impede their ability to protect that interest." (Emphasis added). The South Carolina Supreme Court has conveyed a broad view of the Rule 24(a)(2) standard. *See Ex parte DeBordieu Colony Cmty. Ass'n, Inc.*, 442 S.C. 285, 290, 898 S.E.2d 179, 181-82 (Ct. App. 2024) (stating "[w]e interpret the rules to permit liberal intervention [when] ...judicial economy will be promoted by the declaration of the rights of all parties who may be affected. Accordingly, we must consider the pragmatic consequences of a decision to permit or deny intervention and avoid setting up rigid applications of Rule 24(a)(2)").

A court must consider the following factors in determining whether a motion to intervene is timely: "1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; 2) the reason for the delay; 3) the stage to which the litigation has progressed; and 4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denying intervention." *Ex parte Reichlyn*, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993). After considering these factors, I find in favor of Spano and grant its Motion to Intervene.

Next, the Commission seeks dismissal of the Plaintiff's appeal pursuant to Rules 12(b)(1), (7), and because of the Plaintiffs' failure to name the successful permittee and property owner, Spano, as a party to this appeal. *See Spanish Wells Prop. Owners Ass'n, Inc. v. Bd. of Adjustment of Town of Hilton Head Island, 295* S.C. 67, 68, 367 S.E.2d 160, 161 (1988) (noting that owner-applicants are permittees and *necessary parties* because

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owners hold the most vital interest in the appeals process) (emphasis added). A permittee, such as Spano, is a necessary party to this appeal of the Commission's Decision to the Circuit Court. *See* F. Patrick Hubbard, *A Guide to South Carolina Zoning Law*, 75 S.C. L. Rev. 281, 327–28 (2023) (the failure to serve the permittee within the relevant time frame *will result in dismissal of the appeal*, because "the timeliness of an appeal from a zoning board's decision is a jurisdictional requirement and, as such, may be raised at any time by either party or *sua sponte* by the court) (citing *Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 896 (Ct. App. 2000)).

Spano was a party to the proceeding before the Commission because it was the applicant for the preliminary plat approval of the Project. There is no evidence in the record that Spano was served with the appeal documents. Therefore, this appeal is untimely because Plaintiffs failed to include Spano as a necessary party. *See* Rule 74, SCRCP (recognizing that statute governs the procedure on appeal to the circuit court from the decision of inferior tribunals and states that "[n]otice of appeal to the circuit court must be served on all parties within thirty (30) days after receipt of written notice" of the decision from which appeal is made) (emphasis added). Accordingly, because Plaintiffs' appeal is untimely, this Court does not have jurisdiction to decide the appeal on the merits. Therefore, the Court finds the appeal should be dismissed.

Therefore, Spano's Motion to Intervene is hereby granted and Commission's Motion to Dismiss is hereby granted. Accordingly, as of the date of this Order, Plaintiffs' appeal is hereby dismissed with finality.

IT IS SO ORDERED.

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

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Anderson Common Pleas

Case Caption: Hubert N Smith Jr. , plaintiff, et al VS Anderson County Planning Commission

Case Number: 2024CP0400975

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2025CP0400328

Hubert Smith Jr. et al
PLAINTIFF(S)

Anderson County Planning Commission et al
DEFENDANT(S)

Submitted by: R. Lawton McIntosh	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

THIS APPEAL IS DENIED. THE ANDERSON COUNTY PLANNING COMMISSION ACKNOWLEDGED THAT THE APPROVED MAP DICTATING THE DEVELOPMENT SCHEME PROPERLY PROTECTS THE SLAVE GRAVES THAT EXIST ON THE PROPERTY. APPELLANT FAILED TO MEET ITS BURDEN BY ESTABLISHING THE COMMISSION DECISION IS ERRONEOUS AS A MATTER OF LAW.

This order ☒ ends ☐ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

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E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2155	
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2025 Jun 05 12:17 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

Anderson Common Pleas

Case Caption: Hubert H Smith Jr. , plaintiff, et al VS Anderson County Planning Commission , defendant, et al

Case Number: 2025CP0400328

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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ELECTRONICALLY FILED - 2025 Jun 10 4:29 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Hubert N. Smith, Jr. and Stanley Hix, *Plaintiffs/Appellants*, v. Anderson County Planning Commission and Spano & Associates, Inc., *Defendants/Respondents*.	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT Civil Action No. 2025-CP-04-00328 **ORDER**

This matter is before the Court on the second appeal ("Second Appeal") regarding the Anderson County Planning Commission ("ACPC") approval of a *preliminary* plat for the Anderson Reserve subdivision project ("Anderson Reserve"). The Court heard oral arguments regarding the merits of the Second Appeal on June 4, 2025. After an opportunity to review the relevant pleadings and memoranda of record, the supporting information provided by counsel, and careful consideration of the relevant law, this Court hereby dismisses the Second Appeal of Appellants Hubert N. Smith, Jr. and Stanley Hix (collectively, "Appellants").

BACKGROUND

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

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

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

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

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

LEGAL STANDARD

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

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

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

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

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

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

DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

IT IS SO ORDERED.

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

June _____, 2025

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Anderson Common Pleas

Case Caption: Hubert H Smith Jr. , plaintiff, et al VS Anderson County Planning Commission , defendant, et al

Case Number: 2025CP0400328

Type: Order/Dismissal

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ELECTRONICALLY FILED - 2025 Jun 30 11:18 AM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Hubert N. Smith, Jr. and Stanley Hix, *Plaintiffs/Appellants*, v. Anderson County Planning Commission and Spano & Associates, Inc., *Defendants/Respondents*.	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT Civil Action No. 2025-CP-04-00328 **ORDER**

This matter is before the Court on the second appeal ("Second Appeal") regarding the Anderson County Planning Commission ("ACPC") approval of a *preliminary* plat for the Anderson Reserve subdivision project ("Anderson Reserve"). The Court heard oral arguments regarding the merits of the Second Appeal on June 4, 2025. After an opportunity to review the relevant pleadings and memoranda of record, the supporting information provided by counsel, and careful consideration of the relevant law, this Court hereby dismisses the Second Appeal of Appellants Hubert N. Smith, Jr. and Stanley Hix (collectively, "Appellants").

BACKGROUND

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

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

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

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

LEGAL STANDARD

The "any evidence" standard of review applies to appeals of planning commission decisions. *See Town of Hollywood v. Floyd,* 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013) (citing ***Kurschner v. City of Camden Planning Comm'n***, 376 S.C. 165, 173, 656 S.E.2d 346, 351 (2008)); *see also* S.C. Code Ann § 6-29-840 (2005). The "any evidence" standard *is the most deferential* ***standard of review recognized by South Carolina's courts***. *Alliance to Preserve the Old White Horse Road Corridor, LLC v. RP&L, LLC*, No. 2021-CP-23-03048, 2022 WL 20804832, at *1 (Com. Pl. Aug. 17, 2022) (emphasis added). Planning commissions receive this deference because of the South Carolina Supreme Court's recognition of "the legislature's intent [to grant] a planning

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

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The current plat, which was revised to accommodate the findings of Appellants' own experts ("Revised Plat"), was submitted to the ACPC prior to the January 2025 Decision. The Revised Plat is the current version on file with ACPC staff and has worked its way through the ordinary course of several iterations of review and comments by the appropriate Anderson County departments. This was confirmed by counsel for the ACPC and Spano, as well as the ACPC staff present at the June 4, 2025 hearing. Based on the submissions and information provided by the parties, I find that the Revised Plat (1) identifies the gravesite area to be protected and (2) shows

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the protected gravesite area will be in "open space" in compliance with § 24-401(7). Thus, this Court finds the Appellants' argument concerning the ACPC's approval of the "wrong map" to be without merit.[3]

Likewise, Appellants' contention that the ACPC failed to hold a public hearing or to provide certain information to the public fails. Once approved by the ACPC, subsequent revisions to *preliminary* plats do not mandate public comment or a public meeting. This comports with Anderson County Ordinance § 24-335(5), which states, in pertinent part: "[a]pproval of the *preliminary* plat constitutes *general* approval by the planning commission of the road alignments, dimensions, layout, shape of lots and proposed rights-of-way." *Id.* (emphasis added); *see also* § 24-337 ("The following supplemental information, where applicable, shall be submitted *after* approval of the *preliminary* plat.") (emphasis added); § 24-335(5) ("However, review and approval by other departments and government agencies must be obtained, including, but not limited to, stormwater permits from county stormwater managements and the Department of Health and Environmental Control, which must be obtained prior to beginning land disturbing activity.").[4] Accordingly, Appellants' arguments concerning the ACPC's failure to hold a public meeting or provide certain information to the public fail as a matter of law.

The ACPC fully complied with this Court's directive in the First Appeal by thoroughly evaluating the existence of gravesites. Similarly, Appellants received the relief they sought in the First Appeal, as they were given the opportunity to conduct independent investigations using their

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

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

ELECTRONICALLY FILED - 2025 Jun 30 11:18 AM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

own experts. Given these circumstances, Spano has exceeded legal requirements in addressing the matter.

CONCLUSION

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

IT IS SO ORDERED.

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

June _____, 2025

ELECTRONICALLY FILED - 2025 Jun 30 11:18 AM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

Anderson Common Pleas

Case Caption: Hubert H Smith Jr. , plaintiff, et al VS Anderson County Planning Commission , defendant, et al

Case Number: 2025CP0400328

Type: Order/Amend

order denied

s/R.Lawton McIntosh

Electronically signed on 2025-06-30 11:17:07 page 7 of 7

ELECTRONICALLY FILED - 2025 Jun 30 11:18 AM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2025 CP-04-00328

HUBERT N. SMITH, JR. AND STANLEY HIX

PLAINTIFF(S)

ANDERSON COUNTY PLANNING COMMISSION AND SPANO & ASSOCIATES, INC.

DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

PLAINTIFF MOTION TO ALTER OR AMEND IS DENIED WITHOUT THE NECESSITY OF A FORMAL HEARING. NO FORMAL ORDER IS REQUESTED.

This order ☒ ends ☐ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

ELECTRONICALLY FILED - 2025 Jun 30 11:02 AM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2025 Jun 30 11:02 AM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

ELECTRONICALLY FILED - 2025 Jun 30 11:02 AM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

Anderson Common Pleas

Case Caption: Hubert H Smith Jr. , plaintiff, et al VS Anderson County Planning Commission , defendant, et al

Case Number: 2025CP0400328

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2025-06-30 10:51:26 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2025 CP-04-00328

HUBERT H. SMITH JR. ET, AL.
PLAINTIFF(S)

ANDERSON COUNTY PLANNING COMMISSION ET, AL.
DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

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

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

ELECTRONICALLY FILED - 2025 Aug 27 3:54 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2025 Aug 27 3:54 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

ELECTRONICALLY FILED - 2025 Aug 27 3:54 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

Anderson Common Pleas

Case Caption: Hubert H Smith Jr. , plaintiff, et al VS Anderson County Planning Commission , defendant, et al

Case Number: 2025CP0400328

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2025-08-27 15:44:54 page 3 of 3

ELECTRONICALLY FILED - 2025 Sep 04 8:52 AM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Hubert N. Smith, Jr. and Stanley Hix, *Plaintiffs/Appellants*, v. Anderson County Planning Commission and Spano & Associates, Inc., *Defendants/Respondents*.	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT Civil Action No. 2025-CP-04-00328 **ORDER GRANTING MOTION TO CORRECT THE RECORD**

This matter comes before the Court on Spano & Associates, Inc.'s Motion to Correct the Record pursuant to Rule 60(a) of the South Carolina Rules of Civil Procedure ("Motion"). Specifically, Spano & Associates, Inc. seeks an order clarifying that all references to "Spano & Associates, Inc." shall be deemed to refer to Spano & Associates Asheville, LLC in the following actions—*Hubert N. Smith Jr. and Stanley Hix v. Anderson County Planning Commission*, No. 2024-CP-04-00975, and *Hubert N. Smith Jr. and Stanley Hix v. Anderson County Planning Commission and Spano & Associates, Inc.*, No. 2025-CP-04-00328. The Motion also requests that the captions in all future filings in these matters be updated to properly identify Spano & Associates Asheville, LLC as the Respondent, in its capacity as the owner of the subject property.

On August 27, 2025, the Court heard oral arguments on the Motion. After an opportunity to review the relevant pleadings and memoranda of record, the supporting information provided by counsel, and careful consideration of the relevant law, the Court grants the Motion.

South Carolina courts routinely allow amendment of the record to substitute one name for another under Rule 60, SCRCP. *See Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 240, 399 S.E.2d 779, 781 (1990). "If it later appears that the true name of the corporation is

different from the name under which it is sued, the misnomer is properly a subject of amendment." *Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992). The failure to correct the corporate name, however, does not invalidate the process or the judgment where the misnomer causes the corporation no prejudice. *Id.*[1]

The Court finds that the incorrect naming of Spano is a misnomer which should be corrected as a clerical mistake or error arising from oversight pursuant to Rule 60(a), SCRCP. The two Spano entities are related, and neither Spano entity suffered any prejudice from this misnomer. Specifically, Ralph Spano ("Mr. Spano") is the Registered Agent of Spano & Associates, Inc. and is an Authorized Person of Spano & Associates Asheville, LLC. (*Compare* Florida Secretary of State pages for Spano & Associates and for Spano & Associates Asheville, LLC, attached to Motion as Ex. B.)

On October 17, 2024, counsel for Spano correctly informed Appellants and the Court: "I represent Spano and Associates, Asheville, LLC. My client owns the real property at issue in the above-referenced appeal." (*See* Motion, Ex. A.) Appellants named Spano & Associates, Inc., as a party to this action. *See Compl.*, at ¶ 3. The Court notes that all parties participated in this appeal as if the correct defendant entity had been named. The Court finds that there is no prejudice to either side from this oversight, and the arguments in these proceedings were the same as they would have been if the correct defendant entity was named.

---

[1] *See also Turnstall v. The Lerner Shops,* 160 S.C. 557, 563, 159 S.E. 386, 388 (1931) (noting that "a mere misnomer of a corporation defendant in words and syllables is immaterial. … [A]s a general rule the misnomer of a corporation … is immaterial if it appears that it could not have been, or was not misled."); *United States v. A.H. Fischer Lumber Co.*, 162 F.2d 872 (4th Cir. 1947) (noting that "the purpose of process is to bring parties into court. If it names them in such terms that every intelligent person understands who is meant, as is the case here, it has fulfilled its purpose; and courts should not put themselves in the position of failing to recognize what is apparent to everyone else.").

ELECTRONICALLY FILED - 2025 Sep 04 8:52 AM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

For these reasons, and those discussed at oral argument, **I HEREBY GRANT** the Motion to Correct the Record and, accordingly, all references to "Spano & Associates, Inc." in the following actions—*Hubert N. Smith Jr. and Stanley Hix v. Anderson County Planning Commission*, No. 2024-CP-04-00975, and *Hubert N. Smith Jr. and Stanley Hix v. Anderson County Planning Commission and Spano & Associates, Inc.*, No. 2025-CP-04-00328—shall *nunc pro tunc* be deemed to refer to Spano & Associates Asheville, LLC, and captions in all future filings in these matters shall be updated to properly identify Spano & Associates Asheville, LLC as the Respondent, in its capacity as the owner of the subject property.

(Judicial Signature to Follow)

ELECTRONICALLY FILED - 2025 Sep 04 8:52 AM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

ELECTRONICALLY FILED - 2025 Sep 04 8:52 AM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

Anderson Common Pleas

Case Caption: Hubert H Smith Jr. , plaintiff, et al VS Anderson County Planning Commission , defendant, et al

Case Number: 2025CP0400328

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2025-09-03 17:17:38 page 4 of 4

ELECTRONICALLY FILED - 2024 May 07 2:02 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Hubert N. Smith, Jr. and Stanley Hix, Plaintiffs, v. Anderson County Planning Commission, Defendant.	)	IN THE COURT OF COMMON PLEAS IN THE 10TH CIRCUIT CASE NO: 2024-CP-04-00____ **SUMMONS AND APPEAL FROM ANDERSON COUNTY PLANNING COMMISSION**

TO: DEFENDANT:

You are hereby summoned and required to serve upon the attorney at the address below an Answer to the attached Complaint within 30 days of the date of service hereof. If you fail to do so, judgment by default will be entered against you for the relief demanded in the Complaint.

THE CARPENTER LAW FIRM, PC
s/ *James G. Carpenter*
S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
(864) 235-1269
jim@carpenterlawfirm.net
Attorney for the Plaintiffs

May 7, 2024

ELECTRONICALLY FILED - 2024 May 07 2:02 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Hubert N. Smith, Jr. and Stanley Hix, Plaintiffs, v. Anderson County Planning Commission Defendant.	))))))))))))))	IN THE COURT OF COMMON PLEAS IN THE 10TH CIRCUIT CASE NO: 2024-CP-04-00____ **COMPLAINT** **AND** **APPEAL FROM ANDERSON COUNTY PLANNING COMMISSION**

NOW COME the Plaintiffs, by the undersigned attorney, and as a Complaint against the Defendant, would show unto the Court:

1. Hubert N. Smith, Jr., and Stanley Hix are taxpayers and land-owners of Anderson County, who own property near a development project called Anderson Reserve that was approved by the Defendant Anderson County Planning Commission ("Commission") in its April 9, 2024 meeting (the "Decision").
2. The Commission is a planning commission of Anderson County, a political subdivision of the State of South Carolina.
3. Plaintiffs possess standing to appeal the decision of the Commission, as adjacent property owners affected by the decision, pursuant to *Citizens for Quality Rural Living, Inc. v. Greenville County Planning Commission and RMDC, Inc*., 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019).
4. This Court has jurisdiction pursuant to the South Carolina Constitution, the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10 *et seq*, and the South Carolina Rules of Civil Procedure.

5. This Court also possesses jurisdiction under the following decisions, which address public interest standing and taxpayer standing: *South Carolina Public Interest Foundation v. Wilson,* 437 S.C. 334, 878 S.E.2d 891 (2022); *Adams v. McMaster*, 432 S.C. 225, 851 S.E.2d 703 (2020); *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017); *South Carolina Public Interest Foundation v. Lucas* , 416 S.C. 269, 786 S.E.2d 124 (2016); *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013), *Sloan v. Friends of the Hunley,* 393 S.C. 152, 711 S.E.2d 895 (2011), *American Petroleum Institute v. S.C. Dept. of Revenue,* 382 S.C. 572, 677 S.E.2d 16 (2009), *South Carolina Public Interest Foundation v. Harrell,* 378 S.C. 441, 663 S.E.2d 52 (2008), *Sloan v. Department of Transportation,* 379 S.C. 160, 666 S.E.2d 236 (2008), *Sloan v. Hardee,* 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v. Oconee County,* 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation,* 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins,* 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford,* 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County,* 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County,* 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Baird v. Richland County,* 333 S.C. 519, 511 S.E.2d 69 (1999), and *Newman v. Richland County Historic Preservation Commission,* 325 S.C. 79, 480 S.E.2d 72 (1997).

6. This action raises issues of great public importance, namely the unlawful actions of public officials.

ELECTRONICALLY FILED - 2024 May 07 2:02 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

7. In addition to being adjacent landowners affected by the Decision of the Defendant, Plaintiffs also ask the Court to grant Plaintiffs standing as taxpayers and landowners of Anderson County, and based upon the great public importance of the issues this action raises.

8. Venue is properly placed in Anderson County.

9. As set forth below, the Defendants violated state and local law through its Decision.

10. One hundred thirty-eight (138) property owners are within the 2000-foot radius of the proposed subdivision (the "Property"). Plaintiffs are some of those property owners.

11. Phase 1 of Anderson Reserve, approved in May 2023, forecast that the new subdivision would comprise 71.52 acres and be bordered by Fants Grove Circle and Highway 187 in Anderson County. The developer proposed 150 residential lots on the Property.

12. At a Commission meeting in December of 2023, the Commission voted against a phase 2 and 3 plan. Phase 2 was 182 lots, and phase 3 was 90+ town homes.

13. The Plaintiffs appeared at the December 2023 meeting with the online petition against the subdivision and notified the commission that there are slave graves on the Property.

14. At a Commission meeting held in March, 2024, the Commission eliminated phase 3 of the project, with the plan to just quickly approve phase 2. The Commission voted it down again, because it had not really changed since December.

15. Upon information and belief, the developer sued the Commission in January to appeal the December decision.

16. In the March 2024 Commission meeting, the Commission voted down the project by a vote of 3 to 4.

17. The Commission met again on April 9, 2024.

ELECTRONICALLY FILED - 2024 May 07 2:02 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

18. Plaintiffs are appealing the Decision made after Phase 1 and 2 of Anderson Reserve were combined, and after a change in the number of houses including in the phases, a change that was not reflected in the postcard sent to the landowners as notice of the April 2024 meeting.

19. The post card notice stated that the April 2024 meeting agenda item related only to Phase 2 including only 182 lots. At the April 9, 2024 meeting, the developer sought approval of and discussion was about both Phases 1 and 2. One hundred fifty (150) lots for phase 1 are approved on May 9, 2023. One hundred eighty-two (182) lots for Phase 2 were denied on March 12, 2024.

20. At the April 2024 meeting, the developer said one hundred fifty-two (152) property owners within 2000 feet of the proposed development were notified via post card. On the contrary, the developer made a new preliminary subdivision called Anderson Reserve Subdivision 1 and 2, of which the property owners were not properly notified. The number of acres were combined to be +- 133.67 and total number lots increased to 232, thus adding only a net of 82 lots for both Phases 1 and 2. This is confusing and was not reflected on the meeting agenda. What was proposed and what was approved was not made clear. The Commission did not update the plat that was in the agenda, which reflected some other version of the plan.

21. In the April Commission meeting, Commission member Jan Jones moved to deny the plan. The Chairman seconded the motion. The vote to deny was 2 to 4, and the motion to deny failed. Accordingly, the plan was passed.

22. Due to the legal errors outlined below, Plaintiffs appeal the Decision to this Court.

23. Without this Court's intervention and reversal of the Decision, the Plaintiffs will be immediately and irreparably impaired by the Decision and Defendant's unlawful violations.

ELECTRONICALLY FILED - 2024 May 07 2:02 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

ELECTRONICALLY FILED - 2024 May 07 2:02 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

First Cause of Action
Failure to Comply with Statutes Related to Burial Grounds

24. Plaintiffs incorporate by reference all the preceding paragraphs.

25. Upon information and belief, 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 Property owner had not addressed.

26. 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.

27. Upon information and belief, neither the developer nor the landowner has complied with any of the statutory prerequisites for dealing with graves and burial sites.

28. Accordingly, the Commission's Decision of the to approve this development is erroneous, and premature, and it should be reversed.

Second Cause of Action
Violation of the Freedom of Information Act

29. Plaintiffs incorporate by reference all the preceding paragraphs.

30. The Commission is a "public body" as defined by the South Carolina Freedom of Information Act, S.C. Code Ann. 30-4-20 (a).

31. The meetings of the Commission are public "meetings" as defined by the South Carolina Freedom of Information Act, S.C. Code Ann. 30-4-20 (d).

32. The South Carolina Freedom of Information Act requires that a "public body" must publish an agenda prior to a public "meeting,"

> An agenda for regularly scheduled or special meetings must be posted on a bulletin board in a publicly accessible place at the office or meeting place of the public body and on a public website maintained by the body, if any, at least twenty-four hours prior to such meetings."
>
> S.C. Code Ann. 30-4-80 (a).

33. The Commission may not alter the published agenda except by two-thirds vote of the public body in open session.

> Once an agenda for a regular, called, special, or rescheduled meeting is posted pursuant to this subsection, no items may be added to the agenda without an additional twenty-four hours' notice to the public, which must be made in the same manner as the original posting. After the meeting begins, an item upon which action can be taken only may be added to the agenda by a two-thirds vote of the members present and voting; however, if the item is one upon which final action can be taken at the meeting or if the item is one in which there has not been and will not be an opportunity for public comment with prior public notice given in accordance with this section, it only may be added to the agenda by a two-thirds vote of the members present and voting and upon a finding by the body that an emergency or an exigent circumstance exists if the item is not added to the agenda. Nothing herein relieves a public body of any notice requirement with regard to any statutorily required public hearing.
>
> S.C. Code Ann. 30-4-80 (a).

34. Upon information and belief, the Defendant Commission published an agenda and then departed from the agenda to deal with the development at issue, Anderson Reserve, without securing a two-thirds public vote, in violation of the South Carolina Freedom of Information Act. Accordingly, the Decision is erroneous and must be reversed.

Third Cause of Action
Violation of the Freedom of Information Act

35. Plaintiffs incorporate by reference all the preceding paragraphs.

36. Upon information and belief, the Commission discussed and made a decision on the development at issue, Anderson Reserve, outside of the "public meeting" of the Commission, in violation of the South Carolina Freedom of Information Act.

ELECTRONICALLY FILED - 2024 May 07 2:02 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

ELECTRONICALLY FILED - 2024 May 07 2:02 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

Fourth Cause of Action
Commissioner Conflict of Interest

37. Plaintiffs incorporate by reference all the preceding paragraphs.

38. One member of the Commission, McClain, is employed by An Med, the Regional Hospital.

39. Upon information and belief, An Med is an owner of the Property at issue of Anderson Reserve.

40. By virtue of his employment with An Med, McClain is prohibited from voting on the development of the Property. Nevertheless, he voted to approve the Anderson Reserve project.

41. S.C. Code Ann. § 8-13-700(B)[1] states:

> (B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. **A public official**, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which **affects an economic interest** of himself, a family member, an individual with whom he is associated, or **a business with which he is associated shall**:
>
> (1) **prepare a written statement** describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
>
> * * *
>
> (4) if he is a public official, other than a member of the General Assembly, he shall **furnish a copy of the statement to the presiding officer** of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, **who shall cause the statement to be printed in the minutes** and require that the member **be excused from any votes, deliberations, and other actions** on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes;

[1] Plaintiffs are not asking this Court to make a finding of an ethics violation against any individual member under S.C. Code Ann. § 8-13-700(B).

Id. (emphasis added).

42. This policy is widely recognized, as stated in McQuillin on Municipal Corporations:

> **The public is entitled to have its representatives perform their duties free from any personal or pecuniary interest that might affect their judgment**.[1] Public policy forbids the sustaining of municipal action founded upon a vote of a council member or a member of a municipal governing body in any matter before it which directly or immediately affects him or her individually.[2] Many charters expressly provide that the officers of the corporation shall not be directly or indirectly interested pecuniarily in contracts of any character with the corporation.[3] A finding of self-interest sufficient to set aside municipal action need not be based upon actual proof of dishonesty, but may be warranted whenever a public official, by reason of personal interest in a matter, is placed in a situation of temptation to serve his or her own purposes, to the prejudice of those for whom the law authorizes that official to act.[4] So, members of the legislative body should not be permitted to act in matters before them, as a body, in which they are either directly or indirectly pecuniarily interested.[5] In addition, an individual member ordinarily cannot vote on a matter in which that member[6] or his or her employer[7] is interested. **If the member does, the action taken by the body of which he or she is a member is invalidated**.[8] Although the contrary has also been held,[9] the fact that the vote of the interested member is not necessary to pass an ordinance seems to be immaterial.[10] Where the vote of a member interested is necessary to pass an ordinance or bylaw, such ordinance or bylaw is void,[11] irrespective of how beneficial the ordinance may be.[12]

4 McQuillin Mun. Corp. § 13:52 (3d ed.) ***Members' interest as affecting quorum or majority*** (footnotes omitted) (*emphasis added*).

43. Because of the conflict of interest, the vote must be nullified.

Fifth Cause of Action
Violation of Anderson County Ordinance

44. Plaintiffs incorporate by reference all the preceding paragraphs.

45. Chapter 24 of the Anderson County Ordinances requires a Master Plan and Master Plat for all residential real estate developments. § 24-367.

46. A master plat was not presented to the public, and Plaintiffs cannot find this on any of the agendas.

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47. Upon information and belief, 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.

48. The Developers refused to present what would happen at a later time for phase 3 of Anderson Reserve or any further Property uses.

49. The vote to approve the development must be nullified for lack of a Master Plan and Master Plat.

Sixth Cause of Action
Failure to Fulfill Duty to Vote

50. Plaintiffs incorporate by reference all the preceding paragraphs.

51. David Cothran, Commissioner from District 5, who voted against the development last time, left the meeting prematurely for unspecified reasons.

52. Will Moore, Commissioner from District 4, has consistently failed to vote with respect to the project and failed to articulate any reason for his failure to vote. His failure to vote has left District 4 without a voice or vote on the matter of great importance to the district.

53. Commissioners have a common law duty to vote on issues presented to them. "As long as the members are present in the council chamber and have an opportunity to act and vote with the others, **it is their duty to act**." *Gaskins v. Jones*, 198 S.C. 508, 18 S.E.2d 454, 456 (1942), *quoting,* Dillon on Municipal Corporations, 5th Edition, Section 527 (emphasis added). *See also*, *State ex rel. Walden v. Vanosdal*, 131 Ind. 388, 31 N.E. 79, 15 L.R.A. 832. ("Being present, **it was their duty to act**.") *Id.*, *quoted in Gaskin v. Jones*, 198 S.C. 508, 18 S.E.2d 454, 457 (1942) (*emphasis added*),

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54. Other courts have held similarly.

> If a quorum is present, **municipal legislators cannot avoid their voting responsibilities by refusing to vote when present at a meeting**. (See *Launtz v. People ex rel. Sullivan* (1885), 113 Ill. 137; see also *People ex rel. Anderson v. Chicago & North Western Ry. Co.* (1947), 396 Ill. 466, 71 N.E.2d 701.) **A legal significance or effect must be given to each failure to vote** by a municipal legislator who is present at a board meeting in order to prevent frustration or abuse of the legislative process. (*State ex rel. Young v. Yates* (1897), 19 Mont. 239, 47 P. 1004.) **He should not be allowed** to have his physical presence counted toward the constitution of a quorum and at the same time be allowed **to deny, in effect, his official presence by a failure to vote.** Thus, a municipal legislator's failure to vote either "yea" or "nay" on a proposed ordinance must be interpreted to have the same effect as either a "yea" or a "nay" vote.

Prosser v. Village of Fox Lake, 91 Ill.2d 389, 397-98, 438 N.E.2d 134, 135-136, 63 Ill.Dec. 396 (1982) (*emphasis added*).

55. The policies behind this rule are sound and necessary. By requiring that the nonvoter's vote be recorded with the prevailing side, the rule motivates Commission members to either vote or articulate a reason for their abstention.

56. If the member has a conflict of interest, but if he fails to disclose it and simply fails to vote, his vote is recorded with the prevailing side. His conflict of interest remains, but it is undisclosed. That creates an ethical issue for the Commission member.

57. If a Commission member has a conflict of interest requiring an abstention, and he offers an explanation or reason, that vote does not count for either side. The problem arises when a member fails to vote and fails to explain his non-vote. When he fails to articulate a reason, and there is a real conflict, the non-vote is counted with the prevailing side, which is improper.

58. Commissioners Cothran and Moore failed to follow their statutory and common law duties to vote on issues presented to them or provide a reason in writing for their failure to vote. Accordingly, the decision must be reversed.

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WHEREFORE, having fully pled, the Plaintiffs pray the Court for the following:

1. That the Court reverse the Commission's Decision for failure to comply with the law and ordinances, as alleged herein;
2. That the Court grant Plaintiffs their costs and attorneys' fees of this action, pursuant to S.C. Code Ann. § 15-77-300 and Rule 54 SCRCP; and
3. For such other and further relief as the court deems just and proper.

Respectfully submitted,

THE CARPENTER LAW FIRM, PC

s/ *James G. Carpenter*
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Attorney for the Plaintiffs

May 7, 2024

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ELECTRONICALLY FILED - 2024 Jun 07 11:17 AM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	CASE NO.: 2024-CP-04-00975
Hubert N. Smith, Jr. and Stanley Hix,	)	
	)	
Plaintiffs,	)	
	)	**ANDERSON COUNTY PLANNING COMMISSION'S ANSWER TO COMPLAINT AND APPEAL**
v.	)	
	)	
	)	
Anderson County Planning Commission,	)	
	)	
Defendant.	)	
	)	

Defendant Anderson County Planning Commission ("Defendant") hereby Answers and responds to the Plaintiffs' Complaint and Appeal ("Complaint") as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Notice of Appeal not hereinafter admitted, qualified, or explained.

2. The allegations of paragraphs 1 and 2 are admitted upon information and belief.

3. The allegations of paragraphs 3, 4, and 5 call for legal conclusions to which no response is required.

4. While the statement contained in paragraph 6 does not require a response, to the extent anything construed therein could be deemed an allegation of wrongdoing by the Defendant, it is denied.

5. The allegations of paragraphs 7 and 8 call for legal conclusions to which no response is required.

6. Defendant is without sufficient information to admit or deny the allegations of Paragraphs 7 and 8, and therefore those allegations are denied.

7. The allegations of paragraph 9 are denied.

8. In responding to the allegations of paragraph 10, according to the minutes of the April 9, 2024 meeting, one hundred fifty-two (152) property owners within 2,000 feet were notified of the proposed development. Upon information and belief, Plaintiffs are some of those property owners.

9. In responding to the allegations of paragraph 11, Defendant would crave reference to the developer's submissions and the minutes of the referenced May, 2023 meeting.

10. In responding to the allegations of paragraphs 12 and 13, Defendant would crave reference to the developer's submissions and the minutes of the referenced December, 2023 meeting.

11. The allegations of paragraph 14 are denied as written. The Defendant did not eliminate phase 3 of the proposed project, the developer did. In further response to the allegations in paragraph 14, Defendant would crave reference to the developer's submissions and the minutes of the referenced March, 2024 meeting.

12. In responding to the allegations of paragraph 15, the developer filed a *Notice of Appeal and Request for Pre-Litigation Mediation* on January 2, 2024.

13. In responding to the allegations of paragraph 16, Defendant would crave reference to the developer's submissions and the minutes of the referenced March, 2024 meeting.

14. The allegations of paragraph 17 are admitted.

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15. The allegations of paragraphs 18, 19, and 20 are denied as written. Defendant would further crave reference to the postcards referred to therein, as well as the developer's submissions and the minutes of the referenced Anderson County Planning Commission meetings.

16. In responding to the allegations of paragraph 21, Defendant would crave reference to the developer's submissions and the minutes of the referenced April, 2024 meeting.

17. In responding to the allegations of paragraph 22, Defendant denies any legal errors in reaching its decision on April 9, 2024.

18. The allegations of paragraph 23 are denied.

19. Defendant admits so much of paragraph 24 as previously admitted, and denies or qualifies so much of paragraph 24 as previously denied or qualified.

20. In responding to the allegations of paragraph 25, upon information and belief, there was some form of documentation presented to Defendant at a prior meeting discussing this development, but no affidavit was presented at the April 9, 2024 meeting. Furthermore, as the attorney representing the developer represented in his comments, the developer's representatives had reached out to the individual(s) who had previously commented on the grave issue to seek a meeting and further discussion, and no one had responded to their overture. Therefore, the Defendant was presented with no evidence to support the assertion that there is a grave site on the property.

21. The allegations of paragraphs 26 and 27 call for legal conclusions to which no response is required.

22. The allegations of paragraph 28 are denied.

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23. Defendant admits so much of paragraph 29 as previously admitted, and denies or qualifies so much of paragraph 29 as previously denied or qualified.

24. The allegations of paragraphs 30, 31, 32, and 33 call for legal conclusions to which no response is required.

25. The allegations of paragraph 34 are denied.

26. Defendant admits so much of paragraph 35 as previously admitted, and denies or qualifies so much of paragraph 35 as previously denied or qualified.

27. The allegations of paragraph 36 are denied.

28. Defendant admits so much of paragraph 37 as previously admitted, and denies or qualifies so much of paragraph 37 as previously denied or qualified.

29. The allegations of paragraph 38 are denied.

30. In responding to the allegations of paragraph 39, Defendant would crave reference to the Anderson County Register of Deeds to ascertain the owner of record of the referenced property. Furthermore, the owner listed on the *Development Standards Subdivision Plat Application* submitted to the Defendant is Spano & Associates.

31. The allegations of paragraph 40 are denied.

32. No response is required to paragraph 41, which simply cites a portion of SC statute.

33. No response is required to paragraph 42, which simply cites a portion of a book by author Eugene McQuillin.

34. The allegations of paragraph 43 are denied.

35. Defendant admits so much of paragraph 44 as previously admitted, and denies or qualifies so much of paragraph 44 as previously denied or qualified.

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36. In responding to the allegations of paragraph 45, Defendant would crave reference to the Anderson County Code.

37. The allegations of paragraph 46 are denied.

38. The allegations of paragraph 47 are denied.

39. In responding to the allegations of paragraph 48, what was being presented to the Defendant at the April 9, 2024 meeting was "Conservation Subdivision: Anderson Reserve Phases I and II."

40. The allegations of paragraph 49 are denied.

41. Defendant admits so much of paragraph 50 as previously admitted, and denies or qualifies so much of paragraph 50 as previously denied or qualified.

42. The allegations of paragraph 51 are admitted.

43. In responding to the allegations of paragraph 52, according to the transcript of the April 9, 2024 meeting, Commissioner Will Moore was not even present at the April 9, 2024 meeting.

44. The statements contained in paragraphs 53, 54, 55, 56, and 57 do not require a response. However, in further response, Commissioner Cothran had, prior to the start of the meeting on April 9, 2024, communicated to the Chair that he would have to leave the proceeding at a certain time. When that time arrived he left, which had nothing to do with the vote on this or any other project before the Defendant that evening. Furthermore, as the minutes of the proceeding attest, his vote was not counted on this project.

45. The allegations of paragraph 58 are denied.

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FOR A SECOND DEFENSE[1]

46. The allegations of the above defense are realleged to the extent they are consistent with this defense.

47. Defendant is a governmental entity under the definitions of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, et seq., and therefore subject to the protections and limitations of the Act. To the extent Plaintiffs have raised state law negligence claims, Defendant hereby raises all relevant affirmative defenses contained in § 15-78-60, as well as all other liability limitations contained in the Act.

48. Plaintiffs' maximum recovery, if any, is controlled and limited by the provisions of § 15-78-120 of the South Carolina Tort Claims Act, which prohibits, among other things, Plaintiffs' recovery of punitive damages, attorneys' fees, or interest.

FOR A THIRD DEFENSE

49. The allegations of the above defenses are realleged to the extent they are consistent with this defense.

50. Plaintiffs' alleged loss results from the exercise of discretion or judgment by Defendant; consequently, Plaintiffs' claim is barred by § 15-78-60(5) of the South Carolina Tort Claims Act.

FOR A FOURTH DEFENSE

51. The allegations of the above defenses are realleged to the extent they are consistent with this defense.

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[1]Since Defendant has not yet engaged in discovery with Plaintiff to learn all of the facts and circumstances relating to the matters at issue in this action, it reserves the right to amend its Answer to assert additional affirmative defenses or abandon some affirmative defenses once discovery has been completed.

52. The damages allegedly sustained by Plaintiffs were not proximately caused by the actions of Defendant.

FOR A FIFTH DEFENSE

53. The allegations of the above defenses are realleged to the extent they are consistent with this defense.

54. Defendant is not responsible or liable to the Plaintiffs for any damages caused as the result of the negligent, careless, reckless, willful, and/or wanton conduct of any third party, which conduct was unforeseeable to Defendant and which was the sole proximate cause of Plaintiffs' damages, if any.

FOR A SIXTH DEFENSE

55. The allegations of the above defenses are realleged to the extent they are consistent with this defense.

56. Defendant asserts all defenses available to it under the Anderson County Code.

FOR A SEVENTH DEFENSE

57. The above defenses are realleged to the extent they are consistent with this defense.

58. The damages asserted by Plaintiffs are speculative.

FOR AN EIGHTH DEFENSE

59. The allegations of the above defenses are realleged to the extent they are consistent with this defense.

60. Defendant pleads waiver, estoppel, res judicata, collateral estoppel, and laches as complete defenses to the Plaintiff's claims.

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WHEREFORE, having fully responded to Plaintiffs' Complaint and Appeal from Anderson County Planning Commission, Defendant prays that the Complaint be dismissed, that the Defendant be awarded the costs of this action, and for such other and further relief as this court deems just and proper.

HOLCOMBE BOMAR, P.A.

s/ A. Todd Darwin

A. Todd Darwin
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Attorneys for Defendant Anderson County Planning Commission

Spartanburg, SC
June 7, 2024

ELECTRONICALLY FILED - 2024 Jun 07 11:17 AM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

ELECTRONICALLY FILED - 2024 Oct 28 9:16 AM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON *In the Matter of Spano & Associates, Inc., proposed intervenor, In re:* Hubert N. Smith, Jr. and Stanley Hix, Plaintiff/Appellant, v. Anderson County Planning Commission, Defendant/Respondent.	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT C.A. No.: 2024-CP-04-00975 **SPANO & ASSOCIATES, INC.'S ANSWER TO COMPLAINT AND APPEAL**

Proposed Intervenor, Spano & Associates, Inc.'s ("Spano") hereby Answers and responds to the Plaintiffs' Complaint and Appeal ("Complaint") as follows:

1. Intervenor denies each and every allegation of the Notice of Appeal not hereinafter admitted, qualified, or explained.

2. The allegations of Paragraphs 1 and 2 are admitted upon information and belief.

3. The allegations of Paragraphs 3, 4, and 5 call for legal conclusions to which no response is required. To the extent Intervenor must admit or deny said allegations, Defendant does not contest jurisdiction at this time but reserves the right to do so.

4. While the statement contained in Paragraph 6 does not require a response, to the extent anything construed therein could be deemed an allegation of wrongdoing by the Anderson County Planning Commission, it is denied.

5. The allegations of Paragraphs 7 and 8 call for legal conclusions to which no response is required. To the extent Intervenor must admit or deny said allegations, Intervenor does not contest venue at this time, but reserves the right to do so.

6. The allegations of Paragraph 9 are denied.

7. In response to Paragraph 10, according to the minutes of the April 9, 2024 meeting, one hundred fifty-two (152) property owners within 2,000 feet were notified of the proposed development. Upon information and belief, Plaintiffs are some of those property owners.

8. In response to Paragraph 11, Intervenor would crave reference to Intervenor's submissions and the minutes of the referenced May 2023 meeting.

9. In response to Paragraphs 12 and 13, Intervenor would crave reference to the Intervenor's submissions and the minutes of the referenced December 2023 meeting.

10. The allegations of Paragraph 14 are denied as written. The Anderson County Planning Commission did not eliminate phase 3 of the proposed project, Intervenor did. In further response to the allegations in Paragraph 14, Intervenor would crave reference to the submissions and minutes of the referenced March 2024 meeting.

11. In responding to the allegations of Paragraph 15, Intervenor filed a *Notice of Appeal and Request for Pre-Litigation Mediation* on January 2, 2024.

12. In responding to the allegations of Paragraph 16, Intervenor would crave reference to its submissions and the minutes of the referenced March 2024 meeting.

13. The allegations of Paragraph 17 are admitted.

14. The allegations of Paragraphs 18, 19, and 20 are denied as written. Intervenor would further crave reference to the postcards referred to therein, as well as Intervenor' submissions and the minutes of the referenced Anderson County Planning Commission meetings.

15. In response to Paragraph 21, Intervenor would crave reference to its submissions and the minutes of the referenced April 2024 meeting.

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16. In response to Paragraph 22, Intervenor denies the Anderson County Planning Commission committed any legal errors in reaching its April 9, 2024 decision.

17. The allegations of Paragraph 23 are denied.

18. Intervenor admits so much of Paragraph 24 as previously admitted and denies or qualifies so much of Paragraph 24 as previously denied or qualified.

19. In response to Paragraph 25, upon information and belief, Intervenor would crave reference to the submissions and minutes of the April 9, 2024 meeting.

20. The allegations of Paragraphs 26 and 27 call for legal conclusions to which no response is required.

21. The allegations of Paragraph 28 are denied.

22. Intervenor admits so much of Paragraph 29 as previously admitted and denies or qualifies so much of Paragraph 29 as previously denied or qualified.

23. The allegations of Paragraphs 30, 31, 32, and 33 call for legal conclusions to which no response is required.

24. The allegations of Paragraph 34 are denied.

25. Intervenor admits so much of Paragraph 35 as previously admitted and denies or qualifies so much of Paragraph 35 as previously denied or qualified.

26. The allegations of Paragraph 36 are denied.

27. Intervenor admits so much of Paragraph 37 as previously admitted and denies or qualifies so much of Paragraph 37 as previously denied or qualified.

28. Intervenor lacks sufficient information to respond to the allegations of Paragraph 38 and, therefore, denies the same and demands strict proof thereof.

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29. In response to Paragraph 39, Intervenor would crave reference to the Anderson County Register of Deeds to ascertain the owner of record or the referenced property. Furthermore, the owner listed on the *Development Standards Subdivision Plat Application* submitted to the Anderson County Planning Commission is the Intervenor.

30. The allegations of Paragraph 40 are denied.

31. Paragraph 41 simply cites a portion of the South Carolina Code of Laws to which no response is required by the Intervenor.

32. Paragraph 42 simply cites a portion of a book by author Eugene McQuillin to which no response is required by the Intervenor.

33. The allegations of Paragraph 43 are denied.

34. Intervenor admits so much of Paragraph 44 as previously admitted and denies or qualifies so much of Paragraph 44 as previously denied or qualified.

35. In responding to the allegations of Paragraph 45, Intervenor would crave reference to the Anderson County Code.

36. The allegations of Paragraph 46 are denied.

37. The allegations of Paragraph 47 are denied.

38. In response to the allegations of Paragraph 48, the Anderson County Planning Commission was presented with "Conservation Subdivision: Anderson Reserve Phases I and II" at the April 9, 2024 meeting.

39. The allegations of Paragraph 49 are denied.

40. Intervenor admits so much of Paragraph 50 as previously admitted and denies or qualifies so much of Paragraph 50 as previously denied or qualified.

41. The allegations of Paragraph 51 are admitted.

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42. In response to Paragraph 52, according to the transcript of the April 9, 2024 meeting, Commissioner Will Moore was not present at the meeting.

43. The allegations contained in Paragraphs 53, 54, 55, 56, and 57 do not require a response. However, in further response, upon information a belief, Commissioner Cothran had, prior to the start of the meeting on April 9, 2024, communicated to the Chair that he would have to leave the proceeding at a certain time. When that time arrived, he left, which had nothing to do with the vote on this or any other project before the Anderson County Planning Commission that evening. Furthermore, as the minutes of the proceeding attest, his vote was not counted on this project.

44. The allegations of Paragraph 58 are denied.

45. Intervenor denies each and every allegation of the Complaint and Appeal not specifically admitted hereinabove.

46. Intervenor denies the "WHEREFORE" Paragraph, including all subparts therein, and demands strict proof thereof.

FOR A SECOND DEFENSE

47. The allegations of the above defense are realleged to the extent they are consistent with this defense.

48. The damages allegedly sustained by Plaintiffs were not proximately caused by the actions of the Intervenor.

FOR A THIRD DEFENSE

49. The allegations of the above defense are realleged to the extent they are consistent with this defense.

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50. Intervenor is not responsible or liable to the Plaintiffs for any damages caused as the result of the negligent, careless, reckless, willful, and/or wanton conduct of any third party, which conduct was unforeseeable to Intervenor and which was the sole proximate cause of Plaintiffs' damages, if any.

FOR A FOURTH DEFENSE

51. The allegations of the above defense are realleged to the extent they are consistent with this defense.

52. Intervenor asserts all defenses available to it under the Anderson County Code.

FOR A FIFTH DEFENSE

53. The allegations of the above defense are realleged to the extent they are consistent with this defense.

54. The damages asserted by Plaintiffs are speculative.

FOR A SIXTH DEFENSE

55. The allegations of the above defense are realleged to the extent they are consistent with this defense.

56. Intervenor pleads waiver, estoppel, res judicata, collateral estoppel, and laches as complete defenses to the Plaintiffs' claims.

WHEREFORE, having fully responded to Plaintiffs' Complaint and Appeal from Anderson County Planning Commission, Intervenor prays that the Complaint be dismissed, Intervenor be awarded all costs and fees of this action, and for such other and further relief as this court deems just and proper.

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s/Ronald G. Tate, Jr.
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ELECTRONICALLY FILED - 2024 Oct 28 9:16 AM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Hubert N. Smith, Jr. and Stanley Hix, Plaintiffs, v. Anderson County Planning Commission and Spano & Associates, Inc., Defendants.	))))))))))))))	IN THE COURT OF COMMON PLEAS IN THE 10TH CIRCUIT CASE NO: 2025-CP-04-00____ **SUMMONS AND APPEAL FROM ANDERSON COUNTY PLANNING COMMISSION**

TO: DEFENDANTS:

You are hereby summoned and required to serve upon the attorney at the address below an Answer to the attached Complaint within 30 days of the date of service hereof. If you fail to do so, judgment by default will be entered against you for the relief demanded in the Complaint.

THE CARPENTER LAW FIRM, PC
s/ James G. Carpenter
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(864) 235-1269
jim@carpenterlawfirm.net
Attorney for the Plaintiffs

February 13, 2025

ELECTRONICALLY FILED - 2025 Feb 13 3:45 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

ELECTRONICALLY FILED - 2025 Feb 13 3:45 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Hubert N. Smith, Jr. and Stanley Hix, Plaintiffs, v. Anderson County Planning Commission and Spano & Associates, Inc., Defendants.	)))))))))))))))	IN THE COURT OF COMMON PLEAS IN THE 10TH CIRCUIT CASE NO: 2025-CP-04-00____ **COMPLAINT AND APPEAL FROM ANDERSON COUNTY PLANNING COMMISSION**

NOW COME the Plaintiffs, by the undersigned attorney, and as a Complaint against the Defendants, would show to the Court:

PARTIES AND JURISDICTION

1. Hubert N. Smith, Jr., and Stanley Hix are taxpayers and land-owners of Anderson County, who own property near a development project called Anderson Reserve that was approved by the Defendant Anderson County Planning Commission ("Commission") on April 9, 2024, and approved again on January 14, 2025 (the "Decision").
2. The Commission is a planning commission of Anderson County, a political subdivision of the State of South Carolina.
3. 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.
4. Plaintiffs possess standing to appeal the decision of the Commission, as adjacent property owners affected by the decision, pursuant to *Citizens for Quality Rural Living, Inc. v.*

Greenville County Planning Commission and RMDC, Inc., 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019).

5. This Court has jurisdiction pursuant to the South Carolina Constitution, S.C. Code Ann. § 6-29-820, *et seq*., the South Carolina Uniform Declaratory Judgment Act, § 15-53-10 *et seq*, and the South Carolina Rules of Civil Procedure.

6. This Court also possesses jurisdiction under the following decisions, which address public interest standing and taxpayer standing: *South Carolina Public Interest Foundation v. Wilson,* 437 S.C. 334, 878 S.E.2d 891 (2022); *Adams v. McMaster*, 432 S.C. 225, 851 S.E.2d 703 (2020); *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017); *South Carolina Public Interest Foundation v. Lucas* , 416 S.C. 269, 786 S.E.2d 124 (2016); *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013), *Sloan v. Friends of the Hunley,* 393 S.C. 152, 711 S.E.2d 895 (2011), *American Petroleum Institute v. S.C. Dept. of Revenue,* 382 S.C. 572, 677 S.E.2d 16 (2009), *South Carolina Public Interest Foundation v. Harrell,* 378 S.C. 441, 663 S.E.2d 52 (2008), *Sloan v. Department of Transportation,* 379 S.C. 160, 666 S.E.2d 236 (2008), *Sloan v. Hardee,* 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v. Oconee County,* 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation,* 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins,* 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford,* 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County,* 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County,* 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Baird v. Richland County,* 333 S.C. 519, 511 S.E.2d

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69 (1999), and *Newman v. Richland County Historic Preservation Commission,* 325 S.C. 79, 480 S.E.2d 72 (1997).

7. This action raises issues of great public importance, namely the unlawful actions of public officials and the proper legal treatment of burial grounds.

8. In addition to being adjacent landowners affected by the Decision of the Defendant, Plaintiffs also ask the Court to grant Plaintiffs standing as taxpayers and landowners of Anderson County, and based upon the great public importance of the issues this action raises.

9. Venue is properly placed in Anderson County.

BACKGROUND AND CONTEXT

10. One hundred thirty-eight (138) property owners are within the 2000-foot radius of the proposed subdivision (the "Property"). Plaintiffs are some of those property owners.

11. Phase 1 of Anderson Reserve, approved in May 2023, forecast that the new subdivision would comprise 71.52 acres and be bordered by Fants Grove Circle and Highway 187 in Anderson County. The developer proposed 150 residential lots on the Property.

12. Phase I is 150 houses, and Phase II is 232 houses.

13. The Plaintiffs appeared at the December 2023 meeting and notified the commission that there are slave graves on the Property.

14. In the March 2024 Commission meeting, the Commission voted down the project by a vote of 3 to 4.

15. The Commission met again on April 9, 2024.

16. At the April 9, 2024 meeting, the developer sought approval of both Phases 1 and 2.

17. At the April 2024 meeting, the developer made a new preliminary subdivision called Anderson Reserve Subdivision 1 and 2, of which the property owners were not properly

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notified. The Commission did not update the plat that was in the agenda, which reflected some other version of the plan.

18. In the April Commission meeting, Commission member Jan Jones moved to deny the plan. The vote to deny was 2 to 4, and the motion to deny failed. Accordingly, the plan was passed.

19. Plaintiffs appealed the Decision to this Court.

20. 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.

21. 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.

22. The developer failed to comply with the statutory prerequisites for dealing with graves and burial sites.

23. This Court reversed the **Commission's Decision** to approve this development.

24. The Court issued an Order on August 30, 2024. The Court ruled that Anderson County Planning **Commission's preliminary approval of Phase I & II of Anderson Reserve** was arbitrary and capricious and an abuse of discretion.

25. On September 9, 2024, the Planning Commission filed a Motion to Alter or Amend the **Court's decision.** Unbeknownst to the Planning Commission, after the Appellants had filed an appeal, **the developer "voluntarily" secured a contractor to conduct a site visit and make a** report concerning the possible presence of graves on the property.

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26. However, the contractor searching in the soil, Reed Tech, is a utility company, simply search for utility placements and disturbed soil, and is not properly trained to perform ground penetrating radar to detect burial shafts.

27. Nevertheless, the SM&E 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 ground disturbing and construction activities." Report, page 3.

28. In October 2024, the Court, with the apparent consent of the developer, allowed the Appellants 10 days' access to the property to search for graves.

29. Appellants experts searched two locations and found 20 graves in one location ("Graveyard Hill"), in addition to the location found by the developer marked in Figure 19, in the August 23, 2024, developer's report.

30. On Friday Morning, October 25, 2024, the Court held a hearing on a conference call with the parties and counsel for the developer, Spano and Associates, Inc. The developer confirmed that it had issued a "no trespass" notice to the Appellants. The Court orally denied the Defendant's Motion to Alter or Amend and remanded the case to the Planning Commission.

31. On October 28, 2024, the developer filed a Motion to Intervene. On October 29, the Anderson County Planning Commission filed a Motion to Dismiss. Both motions were filed after the Court had issued its oral ruling.[1]

32. On November 20, 2024, the Court issued a formal written Order confirming its oral ruling issued October 25, 2024.

33. S&ME, working for the developer, submitted a second report dated December 7, 2024.

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

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34. On December 9, 2024, the Appellants submitted a letter to the Planning Commission, with extensive exhibits, from their experts, demonstrating the presence of graves of enslaved persons at one additional location on Rivoli Plantation, probably "Graveyard Hill."

35. These graves are documented in the previous two reports, and ground penetrating radar confirms they are burial shafts.

36. Both experts hired by the plaintiff also recommended a full search of the entire Rivoli Plantation property.

37. Upon receipt of the letter, the Planning Commission postponed the hearing scheduled for December 11, 2024, and reconvened on January 14, 2025, to consider the status of the project, and the Order of remand.

DECISION AT ISSUE ON THIS APPEAL

38. On January 14, 2025, the Defendant Planning Commission, met in **executive session**, returned to the public meeting, proposed and adopted **without discussion** 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.

Minutes of January 14, 2025, Planning Commission, p. 19, ll. 41-47.

39. The Defendant Planning Commission held **no public hearings** prior to the adoption of the foregoing Motion.

40. The Defendant Planning Commission allowed **no input or comments from the public** or neighbors in relation to the foregoing Motion.

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41. The Defendant Planning Commission failed to make available the December 7, 2024, study referenced in the Motion.

42. Upon information and belief, members of the Defendant Planning Commission failed to actually review and consider the letter and exhibits submitted by the Appellants, referenced in the Motion.

43. The Commission failed to disclose whether the December 7, 2024 study confirms or contradicts the findings of the December 9, 2024 letter from the Appellants.

44. The Defendant Planning Commission failed to make publicly available the Appellants' letter and exhibits, confirming the presence of slave graves, referenced in the motion.

45. Upon information and belief, the Planning Commission **has not required** the developer to provide, nor has the Planning Commission approved any **modified maps or drawings** of the subdivision to address the presence of **one definitive gravesite and one probable gravesite** on the Rivoli Plantation, either before or after either of the reports submitted by the developer, or the letter and exhibits submitted by the Appellants.

46. The Planning Commission has not required, and the developer has not provided, an authorized archaeologist to prove or disprove burial grounds on one site in the development.

47. Chapter 24 of the Anderson County Ordinances requires a Master Plan and Master Plat for all residential real estate developments. § 24-367.

48. A **master plat was not presented** to the public, for the January 14, 2025, meeting.

49. The Planning Commission **has not required an updated plat** from December 2024 or January 2025 for Anderson Reserve I and II.

50. 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.

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51. The vote to approve the development must be nullified for lack of a Master Plan and Master Plat.

52. Upon information and belief, the Planning Commission has **not required the developer to erect fences** around, or cordon off, any of the area on "Graveyard Hill" containing slave graves, nor has the developer done so voluntarily.

53. The Planning 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).

54. The Planning Commission **failed to require** the developer to confirm that the cemetery on **Graveyard Hill will be preserved**.

55. The most current rendering of **this proposed subdivision** shows that lots 107-111, and lots 117-121 and the road Spanish Oak Court **will level the hill where 20 graves were found ("Graveyard Hill")**.

56. The Planning Commission **failed to consider** that the local church New Holly Light Missionary Baptist **Church is willing to maintain the grave site** for the development, as they currently maintain two other sites that include enslaved graves.

57. The adoption of January 14, 2025, motion was arbitrary and capricious, and an abuse of discretion by the Planning Commission.

58. By adopting this Motion, the Defendant Plan Commission violated state and local law.

59. Without this Court's intervention and reversal of the Decision, the Plaintiffs will be immediately and irreparably impaired by the Decision and Defendant's unlawful violations.

WHEREFORE, having fully pled, the Plaintiffs pray the Court for the following:

1. That the Court rule that the adoption of the foregoing motion on January 14, 2025, was arbitrary and capricious and an abuse of discretion
2. That the Court reverse the Commission's Decision for failure to comply with the law and ordinances, as alleged herein;

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3. That the Court grant Plaintiffs their costs and attorneys' fees of this action, pursuant to S.C. Code Ann. § 15-77-300 and Rule 54 SCRCP; and

4. For such other and further relief as the court deems just and proper.

Respectfully submitted,

THE CARPENTER LAW FIRM, PC

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Attorney for the Plaintiffs

February 13, 2025

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ELECTRONICALLY FILED - 2025 Mar 13 9:01 AM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Hubert N. Smith, Jr. and Stanley Hix, Plaintiffs, v. Anderson County Planning Commission and Spano & Associates, Inc., Defendants.	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT Civil Action No. 2025-CP-04-00328 **SPANO & ASSOCIATES, INC.'S ANSWER TO PLAINTIFFS' COMPLAINT AND APPEAL**

Defendant Spano & Associates, Inc.'s ("Spano") hereby Answers and responds to the Plaintiffs' Complaint and Appeal ("Complaint") as follows:

GENERAL DENIAL

Spano denies each and every allegation in Plaintiffs' Complaint not expressly admitted herein.

PARTIES, JURISDICTION AND VENUE

1. Spano admits the allegations of paragraph 1 only insomuch as they allege that the Anderson County Planning Commission ("Planning Commission") approved a preliminary plat subdivision for the neighborhood known as Anderson Reserve (the "Property") on April 9, 2024 (the "April 9, 2024 Decision") and, that on January 14, 2025, the Planning Commission unanimously voted to reaffirm the April 9, 2024 Decision (the "January 14, 2025 Decision"). Spano lacks sufficient knowledge or information to form a belief as to any remaining allegations of paragraph 1 and therefore denies the same.

2. Paragraph 2 contains one or more legal conclusion to which no response is required. In the event a response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 2 and therefore denies the same.

3. 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.

4. Spano denies the allegations of paragraph 4.

5. Paragraph 5 contains one or more legal conclusions to which no response is required. To the extent a response is required, paragraph 5 is denied.

6. Paragraph 6 contains one or more legal conclusions to which no response is required. To the extent a response is required, paragraph 6 is denied.

7. Responding to paragraph 7, Spano specifically denies any allegations of unlawful activity or improper treatment of burial grounds. To the extent any further response is required, paragraph 7 is denied.

8. Paragraph 8 is not directed at Spano and therefore no response is required. To the extent a response is required, Spano lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 8 and therefore denies the same.

9. Paragraph 9 contains one or more legal conclusions to which no response is required. To the extent a response is required, paragraph 9 is denied.

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GENERAL ALLEGATIONS

10. Spano lacks sufficient knowledge to form a belief as to the truth of the allegations of paragraph 10 and therefore denies the same.

11. Responding to the allegations of paragraph 11, Spano craves reference to the relevant subdivision plans and applications, which speak for themselves. To the extent any further response is required, Spano lacks sufficient knowledge and information to form a belief as to the truth of the allegations of paragraph 11 and therefore denies the same.

12. Responding to the allegations of paragraph 12, Spano craves reference to the relevant subdivision plans and applications, which speak for themselves. To the extent any further response is required, Spano lacks sufficient knowledge and information to form a belief as to the truth of the allegations of paragraph 12 and therefore denies the same.

13. Responding to the allegations of paragraph 13, Spano craves reference to the meeting minutes from said December 2023, which speaks for itself. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 13 and therefore denies the same.

14. Responding to the allegations of paragraph 14, Spano craves reference to the written decision of the Planning Commission from March 2024, which speaks for itself.

15. Responding to paragraph 15, Spano admits that there was a Planning Commission meeting held on April 9, 2024. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 15 and therefore denies the same.

16. In response to paragraph 16, Spano craves reference to the meeting minutes from the April 9, 2024 Planning Commission meeting, which speaks for itself. To the extent any further

response is required, Spano lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 16 and therefore denies the same.

17. Spano specifically denies any allegation regarding improper procedure by the Planning Commission or that property owners were improperly notified. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 17 and therefore denies the same.

18. In response to paragraph 18, Spano craves reference to the meeting minutes from the April 9, 2024 Planning Commission meeting and the written decision of the Planning Commission, which speak for themselves. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 18 and therefore denies the same.

19. Responding to the allegations of paragraph 19, Spano admits that Plaintiffs appealed the April 9, 2024 Decision to the Anderson County Circuit Court.

20. Responding to paragraph 20, Spano craves reference to the relevant meeting minutes from the date on which Plaintiffs allege said affidavit was presented and also craves reference to said affidavit, which speak for themselves. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 20 and therefore denies the same.

21. Paragraph 21 contains one or more legal conclusions to which no response is required. To the extent a response is required, Spano craves reference to the express language of such statute, which speaks for itself. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 21 and therefore denies the same.

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22. Spano denies the allegations of paragraph 22.

23. Responding to paragraph 23, Spano craves reference to this Court's Order of November 20, 2024, issued in Plaintiffs' prior appeal styled *Hubert N. Smith, Jr. and Stanley Hix v. Anderson County Planning Commission*, C.A. No. 2024-CP-04-00975 ("First Appeal"), which speaks for itself. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 23 and therefore denies the same.

24. Responding to paragraph 24, Spano craves referenced to this Court's Order of August 30, 2024 in the First Appeal, which speaks for itself. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 24 and therefore denies the same.

25. Responding to paragraph 25, Spano craves reference to the Planning Commission's Motion to Alter or Amend of September 9, 2024 (the "Rule 59 Motion") in the First Appeal, which speaks for itself. Further responding, Spano admits that it retained a qualified archeologist to investigate the Property and prepare a report concerning the possible existence of gravesites. Spano denies any remaining allegations of paragraph 25.

26. Responding to paragraph 26, Spano denies any allegation that its investigations and/or reports concerning the potential presence of gravesites on the Property were improper, or unqualified, in anyway. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 26 and therefore denies the same.

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27. Responding to paragraph 27, Spano craves reference to any such report prepared by S&ME, Inc. ("S&ME"), which speaks for itself. Spano denies any remaining allegations of paragraph 27.

28. Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 28 and therefore denies the same.

29. Responding to the allegations of paragraph 29, Spano craves reference to the reports prepared by Plaintiffs' experts, which speak for themselves. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 29 and therefore denies the same.

30. Responding to paragraph 30, Spano admits 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 and that the Court orally denied the Planning Commission's Rule 59 Motion, with a formal order to follow. To the extent any further response is required, paragraph 30 is denied.

31. Responding to paragraph 31, Spano admits that it filed a Motion to Intervene in the First Appeal on or about October 25, 2024, as evidenced by the Certificate of Technical Failure or Technical Difficulties filed on the same date in the First Appeal. Further responding, Spano admits that the Planning Commission filed a Motion to Dismiss in the First Appeal on or about October 29, 2024. Spano further responds that the Court issued a Form 4 Order denying the Planning Commission's Rule 59 Motion on November 13, 2024, which noted that said Order "did not end the case" and directed Plaintiffs' counsel to prepare a formal order.[1]

[1] Responding to paragraph 31, n.1, Spano admits that the Court held a hearing on Spano's Motion to Intervene and the Planning Commission's Motion to Dismiss and that a formal order granting

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32. Responding to paragraph 32, Spano admits that on November 20, 2024, this Court entered its formal order denying the Planning Commission's Rule 59 Motion. Further responding, Spano craves reference to said November 20, 2024 Order, which speaks for itself. To the extent any further response is required, Spano denies the remaining allegations of paragraph 32.

33. Responding to paragraph 33, Spano admits that Kimberly Nagle, M.S., RPA, of S&ME, working for Spano, prepared a report Dated December 7, 2024.

34. Responding to paragraph 34, Spano admits that Plaintiffs submitted a letter to the Planning Commission, the evening before the December 10, 2024 Planning Commission meeting where the Anderson Reserve subdivision was on the agenda, and that said letter enclosed reports purportedly generated in October 2024. To the extent any further response is required, Spano craves reference to said letter and exhibits thereto, which speak for themselves. To the extent any further response is required, Spano denies the remaining allegations of paragraph 34.

35. Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 35 and therefore denies the same.

36. Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 36 and therefore denies the same.

37. Responding to paragraph 37, Spano denies that the Planning Commission postponed its hearing scheduled for December 10, 2024. Spano admits that there was a Planning Commission hearing on January 14, 2025. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 37 and therefore denies the same.

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both motions was entered on February 21, 2025. To the extent any further response is required, Spano denies paragraph 31, n.1.

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38. Responding to paragraph 38, Spano craves reference to the meeting minutes from the January 14, 2025 Planning Commission, which speaks for itself. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 38 and therefore denies the same.

39. Responding to paragraph 39, Spano craves reference to the meeting minutes from the January 14, 2025 Planning Commission, which speaks for itself. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 39 and therefore denies the same.

40. Responding to paragraph 40, Spano craves reference to the meeting minutes from the January 14, 2025 Planning Commission, which speaks for itself. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 40 and therefore denies the same.

41. Responding to paragraph 41, Spano craves reference to the meeting minutes from the January 14, 2025 Planning Commission, which speaks for itself. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 41 and therefore denies the same.

42. Spano denies the allegations of paragraph 42.

43. Responding to paragraph 43, Spano craves reference to the meeting minutes from the January 14, 2025 Planning Commission, which speaks for itself. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 43 and therefore denies the same.

44. Responding to paragraph 44, Spano craves reference to the meeting minutes from the January 14, 2025 Planning Commission, which speaks for itself. To the extent any further

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response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 44 and therefore denies the same.

45. Responding to paragraph 45, Spano craves reference to the meeting minutes from the January 14, 2025 Planning Commission, which speaks for itself. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 45 and therefore denies the same.

46. Spano denies the allegations of paragraph 46.

47. Responding to paragraph 47, Spano craves reference to the language of such ordinance, which speaks for itself. Further responding, Spano denies any allegation that it failed to comply with any law or ordinance. Spano denies any remaining allegation of paragraph 47.

48. Responding to paragraph 48, Spano craves reference to the meeting minutes from the January 14, 2025 Planning Commission, which speaks for itself. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 48 and therefore denies the same.

49. Paragraph 49 is not directed at Spano and therefore requires no response. To the extent a response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 49 and therefore denies the same.

50. Spano specifically denies any allegation that it failed to comply with any law or ordinance. Further responding, Spano craves reference to the meeting minutes from the January 14, 2025 Planning Commission and denies any allegations inconsistent therewith. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 50 and therefore denies the same.

51. Spano denies the allegations of paragraph 51.

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52. Spano denies that it has failed to do anything required by law or ordinance. Further responding, and paragraph 52 is denied.

53. Spano denies that it has failed to comply with any law or ordinance. Further responding, paragraph 53 is denied.

54. Spano denies that the Planning Commission failed to do anything required. Further responding, Spano craves reference to the meeting minutes from the January 14, 2025 Planning Commission, which speaks for itself. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 54 and therefore denies the same.

55. Spano denies the allegations of paragraph 55.

56. Spano denies that the Planning Commission failed to do anything required. Further responding, Spano craves reference to the meeting minutes from the January 14, 2025 Planning Commission, which speaks for itself. To the extent any further response is required, Spano lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 56 and therefore denies the same.

57. Spano denies the allegations of paragraph 57.

58. Spano denies the allegations of paragraph 58.

59. Spano denies the allegations of paragraph 59.

PLAINTIFFS' PRAYER FOR RELIEF

The unnumbered paragraph in Plaintiffs' Complaint entitled "**WHEREFORE**", including subparts (1) through (4), is a Prayer for Relief, to which no response is required. In the event a response is required, Spano denies that Plaintiffs are entitled to any of the relief requested in their Complaint, Notice of Appeal or Prayer for Relief.

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FIRST DEFENSE

Plaintiffs fail to state a claim upon which relief can be granted.

SECOND DEFENSE

The damages allegedly sustained by Plaintiffs were not proximately caused by the actions of Spano.

THIRD DEFENSE

Spano is not responsible or liable to the Plaintiffs for any damages caused as the result of the negligent, careless, reckless, willful, and/or wanton conduct of any third party, which conduct was unforeseeable to Spano and which was the sole proximate cause of Plaintiffs' damages, if any.

FOURTH DEFENSE

Spano asserts all defenses available to it under the Anderson County Code.

FIFTH DEFENSE

The damages asserted by Plaintiffs are speculative.

SIXTH DEFENSE

Plaintiffs' claims are barred by equitable defenses, including unclean hands, waiver, estoppel, res judicata, collateral estoppel, acquiescence, delay, laches and related principles of equity, to the extent applicable.

SEVENTH DEFENSE

Plaintiffs lack standing to bring these claims against Spano.

RESERVATION OF RIGHTS

To the extent additional affirmative defenses become apparent during the course of this action, Spano reserves the right to amend this Answer to include any and all such additional

affirmative defenses. Spano further reserves its rights to seek any and all available relief under the South Carolina Frivolous Civil Proceedings Sanctions Act.

SPANO'S PRAYER FOR RELIEF

WHEREFORE, having fully responded to Plaintiffs' Complaint and Appeal from Anderson County Planning Commission, Spano prays that the Complaint and Appeal be dismissed, Spano be awarded all costs and fees of this action, and for such other and further relief as this court deems just and proper.

GALLIVAN WHITE & BOYD, P.A.

s/Ronald G. Tate, Jr.
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March 13, 2025

Attorneys for Spano & Associates, Inc.

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ELECTRONICALLY FILED - 2025 Apr 14 12:25 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF ANDERSON	)	**C/A No. 2025-CP-04-00328**
Hubert N. Smith, Jr. and Stanley Hix,	)	
Plaintiff/Appellant,	)	**ANDERSON COUNTY PLANNING COMMISSION'S RESPONSE TO COMPLAINT AND NOTICE OF APPEAL**
v.	)	
Anderson County Planning Commission and Spano & Associates, Inc.,	)	
Defendant/Respondent.	)	

Defendant/Respondent Anderson County Planning Commission ("Defendant") hereby responds to Plaintiff/Appellant's ("Plaintiff") Complaint and Notice of Appeal ("Notice of Appeal") as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Notice of Appeal not hereinafter admitted, qualified, or explained.

2. The allegations of Paragraph 1 are admitted upon information and belief.

3. The allegations of Paragraph 2 are admitted.

4. Defendant is without sufficient information to admit or deny the allegations of Paragraph 3, and therefore those allegations are denied.

5. The allegations of Paragraphs 4, 5, and 6 call for legal conclusions to which no response is required.

6. While the statement contained in Paragraph 7 does not require a response, to the extent anything construed therein could be deemed an allegation of wrongdoing by the Defendant, it is denied.

7. The allegations of Paragraphs 8 and 9 call for legal conclusions to which no response is required.

8. In responding to the allegations of Paragraph 10, according to the minutes of the April 9, 2024, Planning Commission meeting, one hundred fifty-two (152) property owners within a 2,000 feet radius of the proposed subdivision (the "Property") were notified of the proposed development. Defendant is without sufficient information to admit or deny so much of Paragraph 10 as alleges Plaintiff's ownership of property.

9. Responding to the allegations of Paragraphs 11 and 12, Defendant craves reference to the developer's submissions and the minutes of the referenced May, 2023 meeting and deny any allegation inconsistent with that record.

10. Responding to the allegations of Paragraph 13, Defendant craves reference to Plaintiff's submissions, if any, and the minutes of the referenced December, 2023 meeting and deny any allegation inconsistent with that record.

11. Responding to the allegations of Paragraph 14, Defendant craves reference to Plaintiff's submissions, if any, and the minutes of the referenced March, 2024 meeting and deny any allegation inconsistent with that record.

12. The allegations of Paragraph 15 are admitted.

13. Responding to the allegations of Paragraphs 16, 17, and 18, Defendant craves reference to the developer's submissions and the minutes of the referenced April, 2024 meeting and deny any allegation inconsistent with that record.

14. The allegations of Paragraph 19 are admitted.

15. Responding to the allegations of Paragraph 20, upon information and belief, there was some form of documentation presented to Defendant discussing gravesites at the Property.

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Defendant is without sufficient information to admit or deny the remaining allegations of Paragraph 20, and therefore those allegations are denied.

16. The allegations of Paragraph 21 call for legal conclusions to which no response is required.

17. Defendant is without sufficient information to admit or deny the allegations of Paragraph 22, and therefore those allegations are denied.

18. Responding to the allegations of Paragraphs 23, 24, and 25, Defendant craves reference to the orders and filings referenced, and to every subsequent order issued or filing submitted with the Court of Common Pleas for the Tenth Judicial Circuit in that appeal, and denies any allegation inconsistent with that record. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraphs 23, 24, and 25, and therefore those allegations are denied.

19. Responding to the allegations of Paragraphs 26 and 27, Defendant craves reference to the report or reports referenced, and denies any allegation inconsistent with that record. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraphs 26 and 27, and therefore those allegations are denied.

20. Defendant is without sufficient information to admit or deny the allegations of Paragraph 28, and therefore those allegations are denied.

21. Responding to the allegations of Paragraph 29, Defendant craves reference to the report or reports referenced, and denies any allegation inconsistent with that record. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraph 29, and therefore those allegations are denied.

22. Defendant admits so much of the allegations of Paragraph 30 as allege the

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conference call on that date and that the Court orally denied Defendant's motion. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraph 30, and therefore those allegations are denied.

23. Responding to the allegations of Paragraphs 31 and 32, inclusive of footnote 1, Defendant craves reference to the orders and filings referenced, and denies any allegation inconsistent with that record. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraphs 31 and 32, inclusive of footnote 1, and therefore those allegations are denied.

24. Defendant is without sufficient information to admit or deny the allegations of Paragraph 33, and therefore those allegations are denied.

25. Defendant admits so much of the allegations of Paragraphs 34, 35, 36 as allege the submission of a report to Defendant on or about the date indicated. Further answering, Defendant craves reference to the report or reports referenced in the allegations of Paragraphs 34, 35, 36, and denies any allegation inconsistent with that record.

26. Defendant admits so much of the allegations of Paragraph 37 as allege that Defendant considered the Project at the January 14, 2025, Planning Commission meeting. The remaining allegations of Paragraph 37 are denied as stated.

27. Responding to the allegations of Paragraphs 38, 39, 40, and 41, Defendant craves reference to the minutes of the referenced January, 2025 meeting and deny any allegation inconsistent with that record. Further answering, to the extent allegations of Paragraphs 38, 39, 40, and 41 allege improper conduct on the part of Defendant, those allegations are denied.

28. The allegations of Paragraphs 42, 43, 44, 45, and 46 are denied.

29. The allegations of Paragraph 47 call for legal conclusions to which no response is

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required.

30. The allegations of Paragraphs 48, 49, 50, 51, and 52 are denied as stated.

31. The allegations of Paragraph 53 call for legal conclusions to which no response is required.

32. The allegations of Paragraph 54 are denied as stated.

33. Responding to the allegations of Paragraph 55, Defendant craves reference to the report or reports referenced, and denies any allegation inconsistent with that record. Defendant is without sufficient information to admit or deny the remaining allegations of Paragraph 55, and therefore those allegations are denied.

34. The allegations of Paragraphs 56, 57, and 58 are denied as stated.

35. Responding to the allegations of Paragraph 59, Defendant denies that Plaintiff is entitled to the relief sought, or any relief, against Defendant.

36. Responding to the allegations of the unnumbered paragraph, inclusive of subparts, beginning with WHEREFORE, Defendant denies that Plaintiff is entitled to the relief sought, or any relief, against Defendant.

FOR A SECOND DEFENSE[1]

37. The allegations of the above defense are realleged to the extent they are consistent with this defense.

38. Defendant is a governmental entity under the definitions of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*, and therefore subject to the protections and

[1] Since Defendant has not yet engaged in discovery with Plaintiff to learn all of the facts and circumstances relating to the matters at issue in this action, it reserves the right to amend its Answer to assert additional affirmative defenses or abandon some affirmative defenses once discovery has been completed.

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limitations of the Act. To the extent Plaintiffs have raised state law negligence claims, Defendant hereby raises all relevant affirmative defenses contained in § 15-78-60, as well as all other liability limitations contained in the Act.

39. Plaintiffs' maximum recovery, if any, is controlled and limited by the provisions of § 15-78-120 of the South Carolina Tort Claims Act, which prohibits, among other things, Plaintiffs' recovery of punitive damages, attorneys' fees, or interest.

FOR A THIRD DEFENSE

40. The allegations of the above defenses are realleged to the extent they are consistent with this defense.

41. Plaintiffs' alleged loss results from the exercise of discretion or judgment by Defendant; consequently, Plaintiffs' claim is barred by § 15-78-60(5) of the South Carolina Tort Claims Act.

FOR A FOURTH DEFENSE

42. The allegations of the above defenses are realleged to the extent they are consistent with this defense.

43. The damages allegedly sustained by Plaintiffs were not proximately caused by the actions of Defendant.

FOR A FIFTH DEFENSE

44. The allegations of the above defenses are realleged to the extent they are consistent with this defense.

45. Defendant is not responsible or liable to the Plaintiffs for any damages caused as the result of the negligent, careless, reckless, willful, and/or wanton conduct of any third party,

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which conduct was unforeseeable to Defendant and which was the sole proximate cause of Plaintiffs' damages, if any.

FOR A SIXTH DEFENSE

46. The allegations of the above defenses are realleged to the extent they are consistent with this defense.

47. Defendant asserts all defenses available to it under the Anderson County Code.

FOR A SEVENTH DEFENSE

48. The above defenses are realleged to the extent they are consistent with this defense.

49. The damages asserted by Plaintiffs are speculative.

FOR AN EIGHTH DEFENSE

50. The allegations of the above defenses are realleged to the extent they are consistent with this defense.

51. Defendant pleads waiver, estoppel, res judicata, collateral estoppel, and laches as complete defenses to the Plaintiff's claims.

FOR A NINTH DEFENSE

52. The allegations of the above defenses are realleged to the extent they are consistent with this defense.

53. Plaintiff lacks standing to bring this action.

FOR A TENTH DEFENSE

54. The allegations of the above defenses are realleged to the extent they are consistent with this defense.

55. Plaintiff is barred from relief to the extent it failed to mitigate its damages.

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FOR AN ELEVENTH DEFENSE

56. The allegations of the above defenses are realleged to the extent they are consistent with this defense.

57. Plaintiff's Complaint fails to state any cause of action against this Defendant and this action should therefore be dismissed pursuant to S.C. R. CIV. P. 12(b)(6).

FOR A TWELFTH DEFENSE

58. The allegations of the above defenses are realleged to the extent they are consistent with this defense.

59. Plaintiff is barred from relief to the extent it failed to mitigate its damages.

FOR A THIRTEENTH DEFENSE

60. The allegations of the above defenses are realleged to the extent they are consistent with this defense.

61. As a governmental entity, Defendant's duties towards Plaintiff, if any, are limited to those imposed by statute, law, or regulation for the benefit of the public.

62. Therefore, Plaintiff's claims are barred by the public duty rule.

FOR A FOURTEENTH DEFENSE

63. The allegations of the above defenses are realleged to the extent they are consistent with this defense.

64. Plaintiffs' alleged loss results from the exercise of discretion or judgment by Defendant; consequently, Plaintiffs' claim is barred by § 15-78-60(5) of the South Carolina Tort Claims Act.

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FOR A FIFTEENTH DEFENSE

65. The allegations of the previous defenses are realleged to the extent they are consistent with this defense.

66. Plaintiff's claims are barred by the terms of S.C. Code Ann. § 15-78-60(1) because a governmental agency is not liable for a loss resulting from legislative, judicial, or quasi-judicial action or inaction.

FOR A SIXTEENTH DEFENSE

67. The allegations of the previous defenses are realleged to the extent they are consistent with this defense.

68. Plaintiff's claims are barred by the terms of S.C. Code Ann. § 15-78-60(2) because a governmental agency is not liable for a loss resulting from administrative action or inaction of a legislative, judicial, or quasi-judicial nature.

FOR A SEVENTEENTH DEFENSE

69. The allegations of the previous defenses are realleged to the extent they are consistent with this defense.

70. Plaintiff's claims are barred by the terms of S.C. Code Ann. § 15-78-60(3) because a governmental agency is not liable for a loss resulting from execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process.

FOR AN EIGHTEENTH DEFENSE

71. The allegations of the previous defenses are realleged to the extent they are consistent with this defense.

72. Plaintiff's claims are barred by the terms of S.C. Code Ann. § 15-78-60(4) because a governmental agency is not liable for a loss resulting from adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies.

WHEREFORE, having fully responded to Plaintiff's Complaint and Notice of Appeal, Defendant prays that a pre-litigation mediation be conducted, that should the pre-litigation mediation not be successful that the Appeal be denied, that the Defendant be awarded the costs of this action, and for such other and further relief as this court deems just and proper.

HOLCOMBE BOMAR, P.A.

s/ Todd Russell Flippin

A. Todd Darwin
SC Bar No.: 7032
Todd Russell Flippin
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Attorneys for Defendant Anderson County Planning Commission

April 11, 2025

Spartanburg, South Carolina

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ELECTRONICALLY FILED - 2025 Apr 22 3:12 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Hubert N. Smith, Jr. and Stanley Hix, Plaintiffs, v. Anderson County Planning Commission and Spano & Associates, Inc., Defendants.	)))))))))))))))	IN THE COURT OF COMMON PLEAS IN THE 10TH CIRCUIT **CASE NO: 2025-CP-04-00328** **PLAINTIFFS' REPLY TO THE ANDERSON COUNTY PLANNING COMMISSION** **SCRCP 8(c)**

NOW COME the Plaintiffs, by the undersigned attorney, pursuant to SCRCP 8(c), and as a **Reply** to the Anderson County Planning Commission, would show to the Court:

REPLY TO THE SECOND DEFENSE

1. This litigation is not asserted under or governed by the South Carolina Tort Claims Act. Accordingly, the Second Defense should be stricken.

REPLY TO THE THIRD DEFENSE

2. This litigation is not asserted under or governed by the South Carolina Tort Claims Act. Accordingly, the Third Defense should be stricken.

REPLY TO THE FOURTH DEFENSE

3. Plaintiffs do not seek damages in this litigation. Accordingly, the Fourth Defense should be stricken.

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REPLY TO THE FIFTH DEFENSES

4. Plaintiffs do not seek damages in this litigation. Accordingly, the Fifth Defense should be stricken.

REPLY TO THE SIXTH DEFENSE

5. The Sixth Defense does not state a valid affirmative defense. Accordingly, the Sixth Defense should be stricken.

REPLY TO THE SEVENTH DEFENSE

6. Plaintiffs do not seek damages in this litigation. Accordingly, the Seventh Defense should be stricken.

REPLY TO THE TENTH DEFENSE

7. Plaintiffs do not seek damages in this litigation. Accordingly, the Tenth Defense should be stricken.

REPLY TO THE TWELFTH DEFENSE

8. Plaintiffs do not seek damages in this litigation. Accordingly, the Twelfth Defense should be stricken.

REPLY TO THE FOURTEENTH DEFENSE

9. This litigation is not asserted under or governed by the South Carolina Tort Claims Act. Accordingly, the Fourteenth Defense should be stricken.

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REPLY TO THE FIFTEENTH DEFENSE

10. This litigation is not asserted under or governed by the South Carolina Tort Claims Act. Accordingly, the Fifteenth Defense should be stricken.

REPLY TO THE SIXTEENTH DEFENSE

11. This litigation is not asserted under or governed by the South Carolina Tort Claims Act. Accordingly, the Sixteenth Defense should be stricken.

REPLY TO THE SEVENTEENTH DEFENSE

12. This litigation is not asserted under or governed by the South Carolina Tort Claims Act. Accordingly, the Seventeenth Defense should be stricken.

REPLY TO THE EIGHTEENTH DEFENSE

13. This litigation is not asserted under or governed by the South Carolina Tort Claims Act. Accordingly, the Eighteenth Defense should be stricken.

WHEREFORE, having fully pled, the Plaintiffs pray the Court for the following relief:

1. That the Court strike all of the foregoing listed defenses, for their legal insufficiency;
2. That the Court rule that the Planning Commission's adoption of the Motion on January 14, 2025, was arbitrary and capricious and an abuse of discretion;
3. That the Court reverse the Planning Commission's Decision for failure to comply with the law and ordinances, as alleged in this appeal;
4. That the Court grant Plaintiffs their costs and attorneys' fees of this action, pursuant to S.C. Code Ann. § 15-77-300 and Rule 54 SCRCP; and

5. For such other and further relief as the court deems just and proper.

Respectfully submitted,

THE CARPENTER LAW FIRM, PC

s/ *James G. Carpenter*
S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
(864) 235-1269
jim@carpenterlawfirm.net
Attorney for the Plaintiffs

April 22, 2025

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ELECTRONICALLY FILED - 2024 Sep 09 3:32 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	CASE NO.: 2024-CP-04-00975
Hubert N. Smith, Jr. and Stanley Hix, Plaintiffs,	)	
v.	)	**ANDERSON COUNTY PLANNING COMMISSION'S MOTION TO ALTER OR AMEND ORDER[1]**
Anderson County Planning Commission, Defendant.	)	

TO: THE HONORABLE R. LAWTON McINTOSH AND JAMES G. CARPENTER, ESQ.:

YOU WILL PLEASE TAKE NOTICE THAT Defendant Anderson County Planning Commission, by and through its undersigned counsel, will appear before the Honorable R. Lawton McIntosh, at the Anderson County Courthouse, on the tenth day following service hereof, or at such other place and time as may be designated by the Court, and then and there request that the Court alter or amend its August 30, 2024, Order in the within matter and issue an order denying the Plaintiffs' Complaint and Appeal in its entirety. This motion is made pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure and upon the following grounds:

As the April 9, 2024 Anderson County Planning Commission meeting minutes reflect, the Planning Commission was only considering preliminary plat approval of the

[1]This motion only pertains to the Court's ruling on the Plaintiffs' first cause of action related to burial grounds.

Anderson Reserve conservation subdivision. Anderson County Code §§ 24-335 and 24-336 apply to the preliminary plat approval process. Specifically, § 24-335(5) states:

> 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 managements 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. (Emphasis added).

Similarly, § 24-336 sets forth the information that must be contained in the preliminary plat reviewed by planning staff. Because the requirements of these Anderson County Code Sections were met with regard to the Anderson Reserve project, staff recommended approval as set forth in the meeting minutes.

All that was being considered by the Planning Commission regarding this project on April 9, 2024 was **preliminary plat approval**. Issues that might relate to the alleged gravesites would have to be addressed by the developer at a subsequent point in the development process. At that time, if there were any gravesites identified or located, the developer would have the option to designate the gravesite(s) by a survey and deed restrict that portion from being developed (leaving the gravesite(s) undisturbed), or seek to have the gravesites moved pursuant to South Carolina law (SC Code §§ 27-43-10 – 27-43-40). Either way, it would not preclude the project from moving forward, it would simply force the developer to make a decision as to which option it was going to choose regarding the gravesite(s). Regardless, counsel for the Planning Commission is not aware of any statute or case law in South Carolina requiring a Planning Commission to make this determination,

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or to require a developer to make such a determination, particularly at the preliminary plat approval stage.

Therefore, the decision of the Planning Commission not to require some affirmative action by the developer to determine whether graves exist at the preliminary plat approval stage was not arbitrary or capricious, nor was it an abuse of discretion, and the approval of Phases I & II of Anderson Reserve should not be reversed or remanded back to the Planning Commission.

Furthermore, while the Planning Commission was unaware of these actions by the developer until after the hearing on this appeal which took place on August 21, 2024, the developer had in fact previously contracted with S&ME, Inc. to complete a site visit and geophysical survey for the Anderson Reserve project. A copy of the report provided to the developer dated August 23, 2021 is attached hereto and incorporated herein by reference in its entirety as Exhibit A. As such, the requirement in this Court's August 30, 2021 Order that on remand the Planning Commission "consider and establish requirements for the developer to establish whether slave graves exist on the property" has already been met by the developer and is therefore moot.

Therefore, the Anderson County Planning Commission respectfully requests that this Court reconsider its August 30, 2024 Order, find there is no merit to Plaintiffs' Complaint and Appeal filed on May 7, 2024, and issue a ruling denying the Complaint and Appeal in its entirety, thereby affirming the Planning Commission's April 9, 2024 approval of the preliminary plat of Anderson Reserve Phases I & II.

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Respectfully Submitted,

HOLCOMBE BOMAR, P.A.

s/ A. Todd Darwin

A. Todd Darwin
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Attorneys for Defendant Anderson County Planning Commission

Spartanburg, SC
September 9, 2024

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EXHIBIT A

ELECTRONICALLY FILED - 2024 Sep 09 3:32 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

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August 23, 2024

Spano and Associates, Inc.
1540 International Parkway, Suite 2000
Lake Mary, Florida 32746

Attention: Mr. Ralph Spano

Reference: **Cultural Resources Literature Review, Site Visit, Geophysical Survey**
Anderson Reserve
Anderson County, South Carolina
Project No. 24600430

Mr. Spano,

S&ME, Inc. (S&ME) has completed a site visit and geophysical survey for the Anderson Reserve project area in Anderson County, South Carolina (Figures 1 and 2). During the due diligence process, an affidavit signed by Mr. Kenneth Rhodes provided information stating that graves of enslaved individuals were buried on the property and provided information to the best of his recollection on where these individuals were interred. A literature review, site visit, and geophysical survey was completed on portions of the project area. The purpose of the literature review was to review historic documents and mapping to determine the likely areas where the graves were present; the purpose of the site visit was to investigate the areas deemed likely for containing the graves based on the results of the literature review and narrow down the areas for the geophysical survey; and the geophysical survey was conducted to determine if anomalies were present that could represent unmarked graves.

Literature Review

Intermittently from June 4 through 9, 2024, a background literature review and records search was conducted utilizing sources from the Clemson University Archives, historic maps, reading through documents and books online that pertained to Rivoli Plantation, and reviewing the online GIS database at the South Carolina Institute of Archaeology and Anthropology (SCIAA) in Columbia. Two of the historic maps show the location of Rivoli Plantation, but do not show a cemetery within the project area. The 1877 map of Anderson County shows Rivoli is owned by J.B. Adger Jr. and the 1897 map of Anderson County shows Rivoli Plantation is owned by O.A. Bowen (husband of Clarissa W. Adger Bowen; daughter of Robert Adger) and an Old Slave Cemetery is located north of the project area (Figures 3 and 4).

The information that came from the Clemson University archives includes poems about Rivoli Plantation that were written by Mr. Robert Adger Bowen (1868–1972) son of O.A and Clarissa Adger Bowen. One of the poems in the collection is called 'Graveyard Hill' which describes the hill where the graves were placed (Figure 5) and a hand drawn map that is not to scale showing what the layout of Rivoli Plantation was, including the barn, overseer house, main house, kitchen, and garden (Figure 6).

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The affidavit from Mr. Rhodes states that:

- Some (graves) were located on the hill and behind the barn.
- There were some graves near where a spring started and on a short branch not too far from the roads.

Historic aerial imagery from 1947 (Figure 7) shows the plantation house with three outbuildings behind the house, the largest appears to be a barn and the other two are likely the overseer house and one of the other structures depicted on the hand drawn map from Robert Adger Bowen. The topographic map shows the spring head to the north not too far from structures (Figure 1).

Based on the information gathered during the literature review, it was thought that the graves of the enslaved individuals are within the area shown in Figure 8, which was the focus of the site visit.

Site Visit

The site visit was completed in June and August 2024, the foundation of the main house remains and two outbuildings adjacent to the house are standing, but in disrepair; there is building material and concentrations of artifacts and sheet metal behind the house, which likely represents the three buildings that were standing in the 1960s (Figures 9 and 10); the footers of the barn and a small enclosure that was attached to the barn were identified during the August 2024 site visit (Figure 11 and 12). During the site visit, there were two areas, fairly close to each other that stood out as containing possible graves due to the following reasons:

- Soil in these areas is deeper than the rest of the areas examined, suggesting the soil has been disturbed, possibly through burials of individuals.
- The volume and placement of fieldstones within these areas is not natural given very limited amounts of fieldstone were identified when walking through the project area. It is common for enslaved individuals or individuals with little wealth to use fieldstone markers instead of more traditional markers.
- One of the areas is situated behind the barn footers.
- The other area appears to be close to a spring head and not far from the road that once traveled through the project area.

Due to the close proximity of the two areas, they are depicted as one area in Figure 13.

Geophysical Survey

In August 2024, a geophysical survey was completed in the two areas of interest in Figure 13. The geophysical survey used electromagnetic profiling (EM) and ground penetrating radar (GPR) geophysical methods in an area behind the footers that belonged to the barn and in a second smaller area that appeared to be near a spring head that had fieldstones and other man-made features (Figures 14 through 18). During the geophysical survey, no evidence of unmarked graves was identified. The full geophysical report is attached to this letter.

Summary and Recommendations

Although no graves were identified during the survey, that does not mean that the individuals were not out there at one point. Given the burials are anywhere from 150 to 200 years old, placed in highly acidic soil in an area of terracing and erosion, it is unlikely that there would be human remains left to identify.

Based on the results of the literature review and site visit, although no evidence of graves was identified during the investigations, it is the opinion of S&ME 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 ground disturbing and construction activities.

Cemeteries are protected by state law (SC Code of Laws 27-43-10 through 27-43-40) so if human remains are identified during ground disturbing activities in other portions of the project area, construction in that area should stop and the authorities should be contacted so the remains can be dealt with in the proper manner. An option to consider, if the developer of the property decides to go this route, is having an archaeological monitor on site during the initial ground disturbing phase of the project that can help mitigate the process should human remains be identified.

Closing

If you have questions or need additional information, please let us know by contacting Kimberly Nagle at knagle@smeinc.com or 803-561-9024.

Sincerely,

S&ME, Inc.

Kim Nagle

Kimberly Nagle, MS, RPA
Principal Archaeologist

Paul Connell

Paul Connell, MA
Field Director

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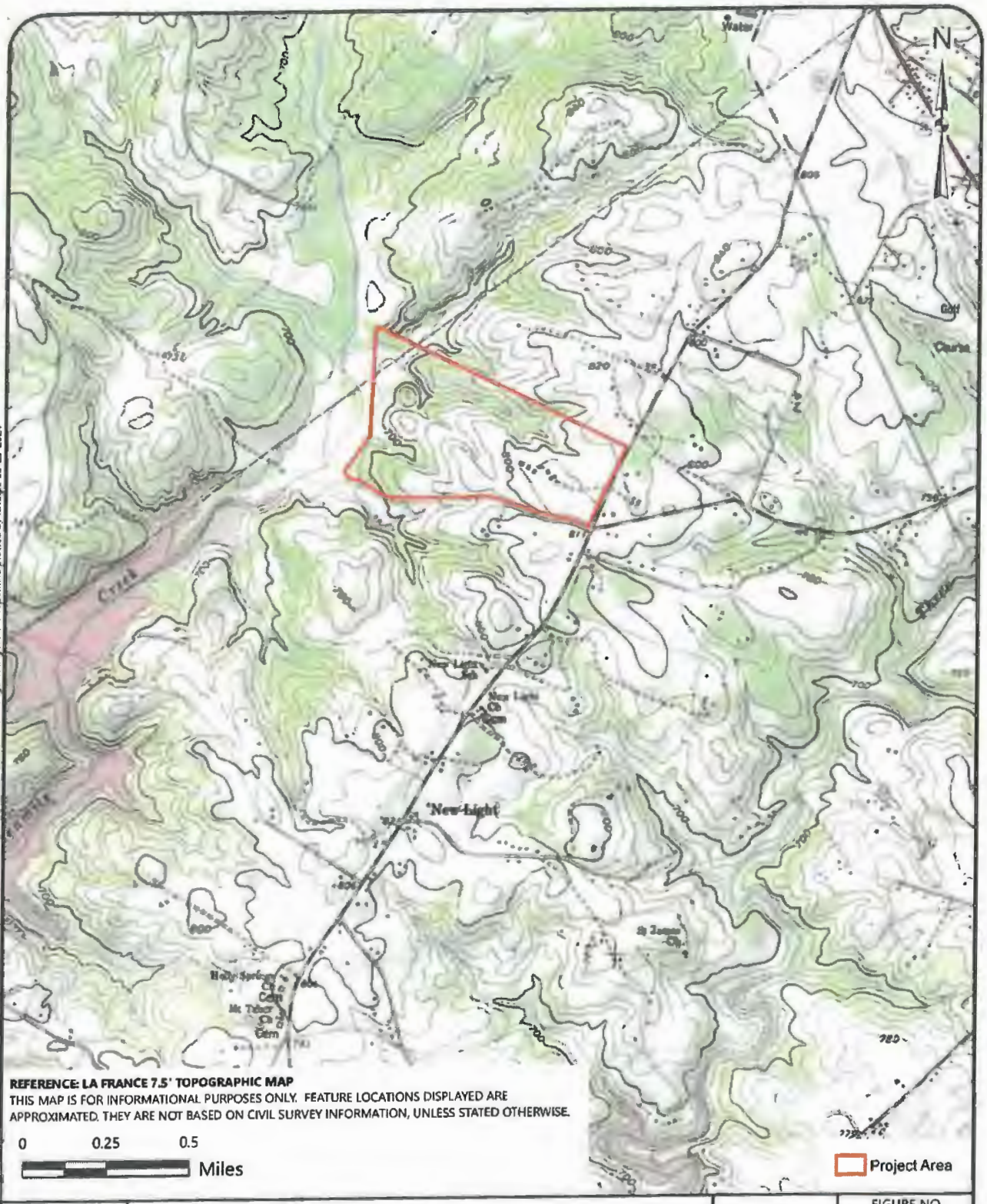

REFERENCE: LA FRANCE 7.5' TOPOGRAPHIC MAP
THIS MAP IS FOR INFORMATIONAL PURPOSES ONLY. FEATURE LOCATIONS DISPLAYED ARE APPROXIMATED. THEY ARE NOT BASED ON CIVIL SURVEY INFORMATION, UNLESS STATED OTHERWISE.

Drawing Path: T:\Columbia-1610\Projects\2024\24610375_Spano_Anderson Reserve_Anderson SC\ENV\GIS\Figures\Figure 1-1 Topo.mxd plotted by KNagle 08-23-2024

	Topographic Map		FIGURE NO.
	ANDERSON RESERVE ANDERSON COUNTY, SOUTH CAROLINA	DATE: 8-23-24 PROJECT NUMBER 24600430	1

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Drawing Path: T:\Columbia-1610\Projects\2024\24610375 Spiano Anderson Reserve Anderson SC\ENV\GIS\Figures\Figure 2 - aerial.mxd -Plotted by KNagle 08-23-2024

Aerial Map

ANDERSON RESERVE
ANDERSON COUNTY, SOUTH CAROLINA

DATE: 8-23-24

PROJECT NUMBER 24600430

FIGURE NO. 2

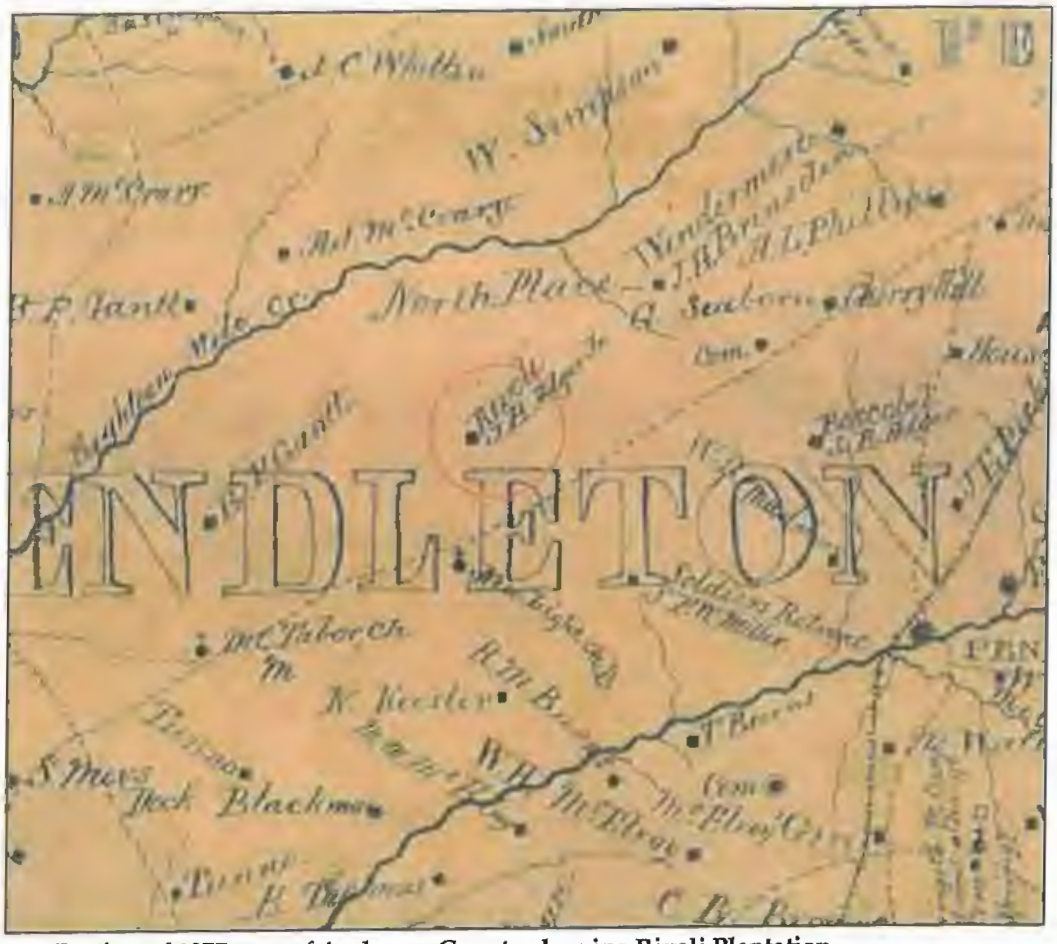

Figure 3. Portion of 1877 map of Anderson County showing Rivoli Plantation.

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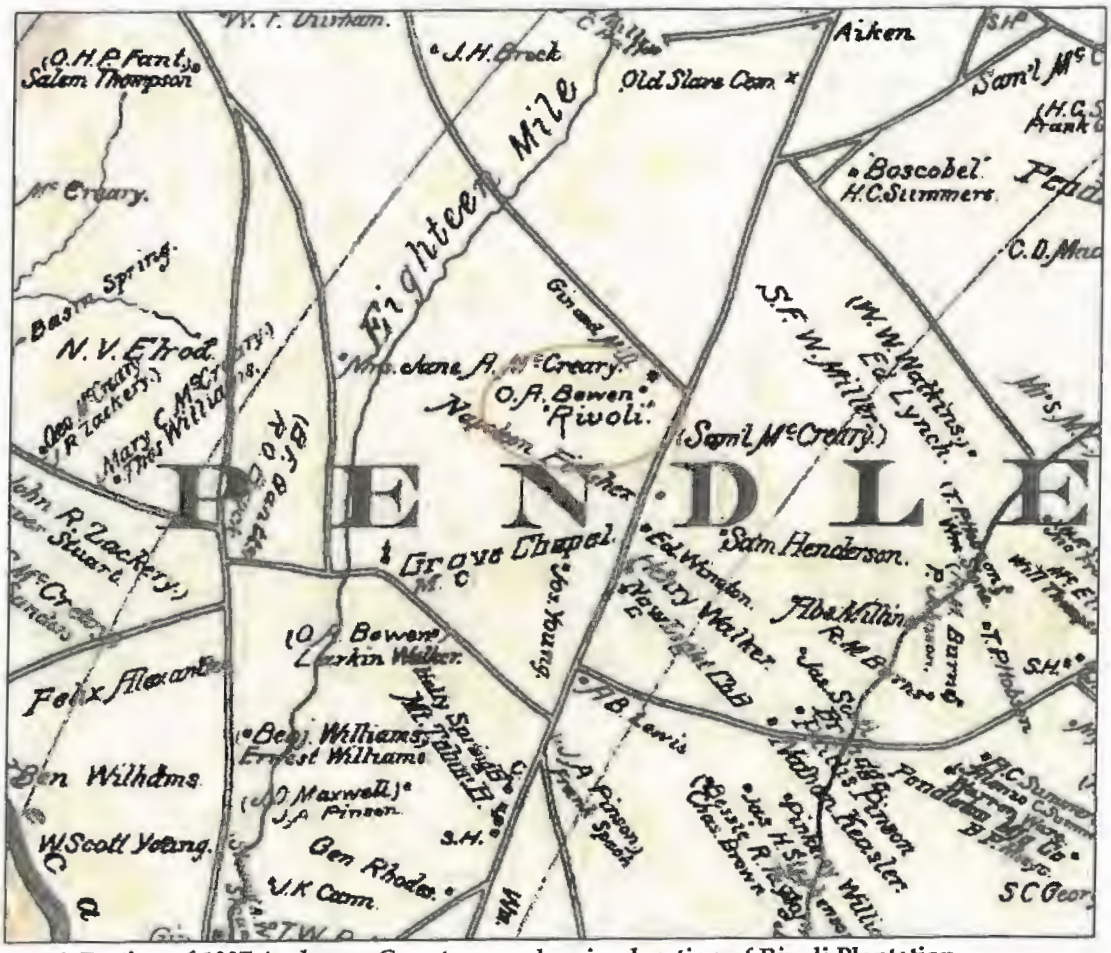

Figure 4. Portion of 1897 Anderson County map showing location of Rivoli Plantation.

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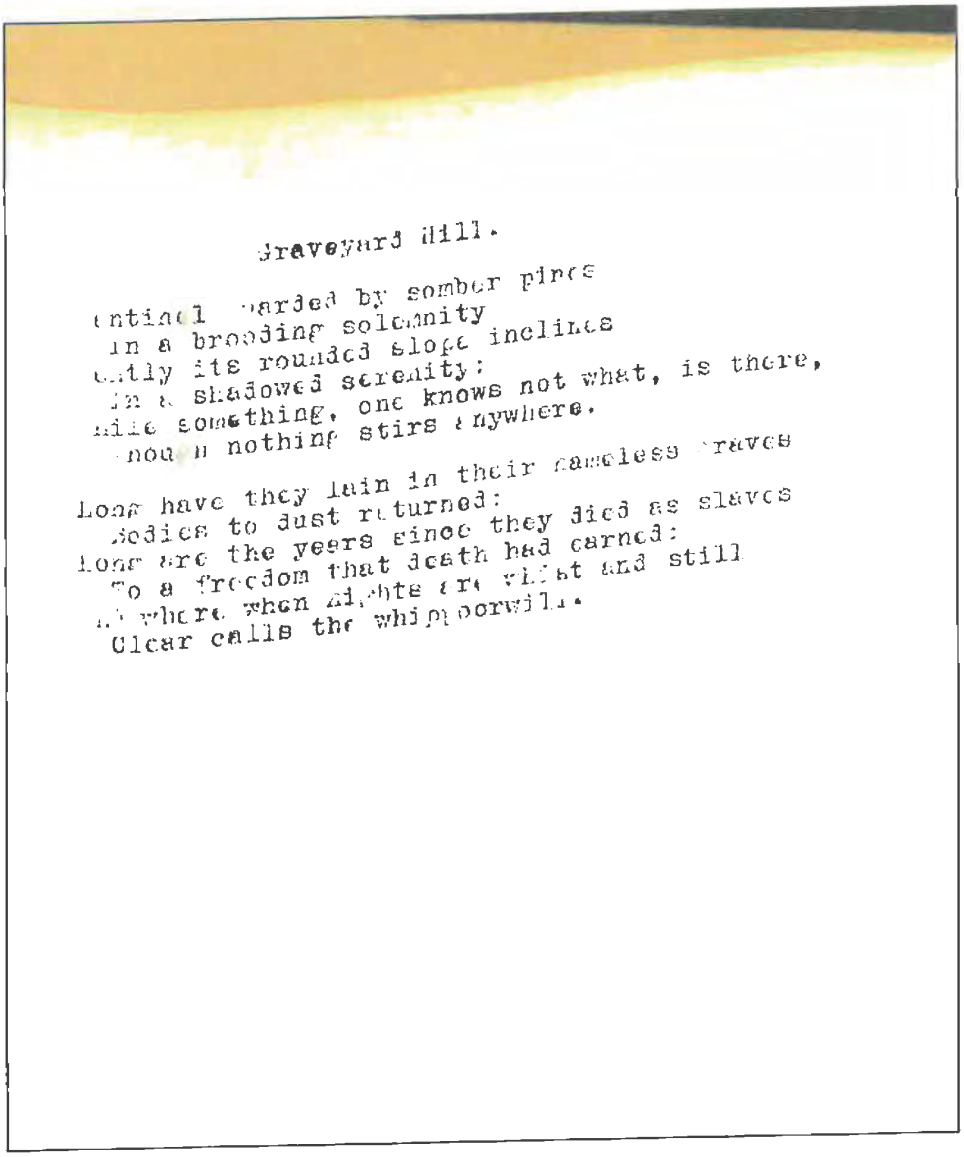

Graveyard Hill.

ntinel guarded by somber pines
In a brooding solemnity
ntly its rounded slope inclines
In a shadowed serenity;
hile something, one knows not what, is there,
nough nothing stirs anywhere.

Long have they lain in their nameless graves
Bodies to dust returned:
Long are the years since they died as slaves
To a freedom that death had earned:
n where when nights are vight and still
Clear calls the whippoorwill.

Figure 5. Graveyard Hill poem.

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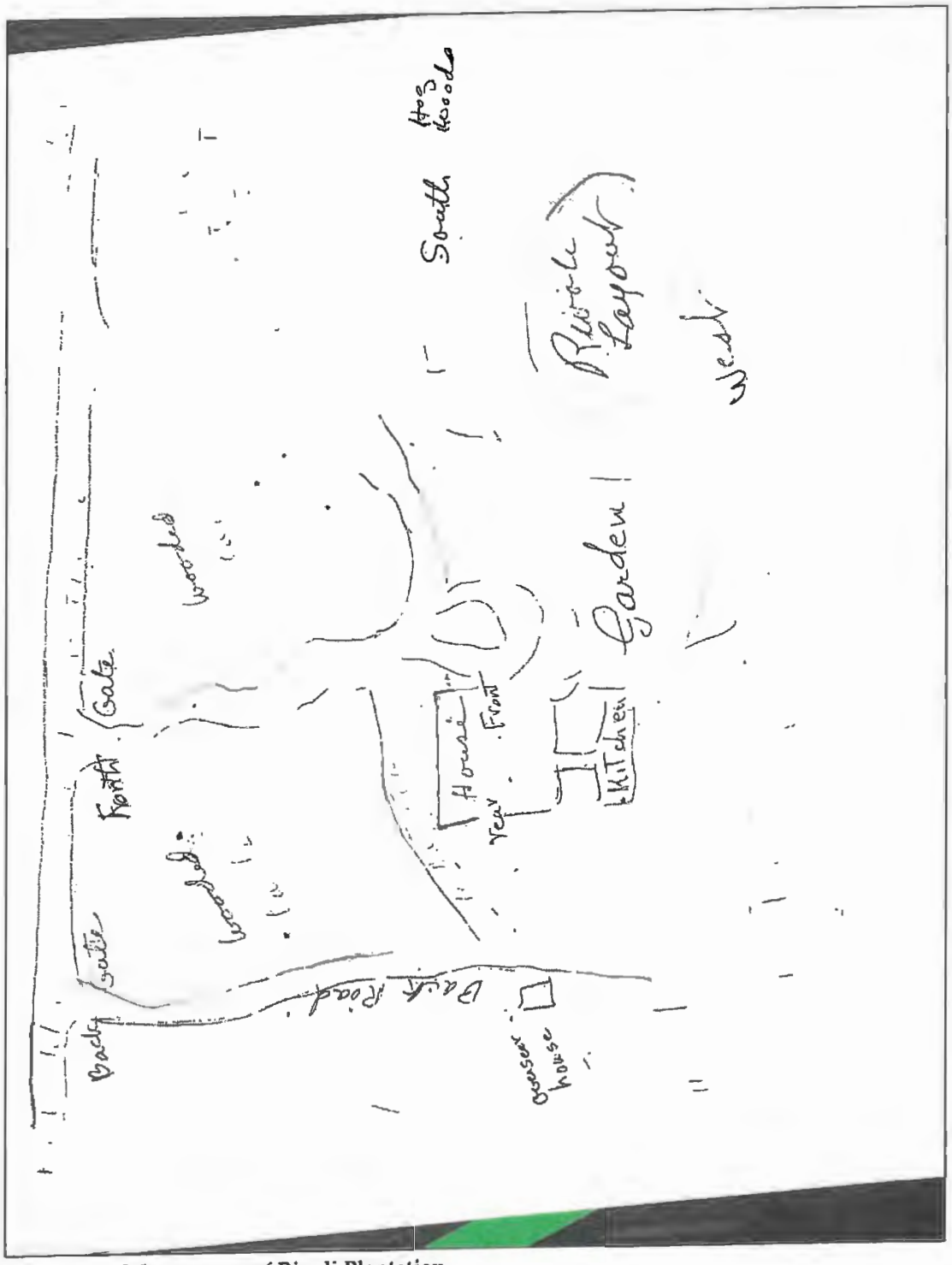

Figure 6. Hand drawn map of Rivoli Plantation.

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Figure 7. Aerial imagery from 1947 showing Rivoli Plantation, barn, and two outbuildings.

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Drawing Path: T:\Columbia-1610\Projects\2024\24610375_Spamo_Anderson Reserve_Anderson SC\ENV\GIS\Figures\Figure 8 - Site Visit.mxd plotted by KNagle 08-23-2024

Site Visit Focus Area

ANDERSON RESERVE
ANDERSON COUNTY, SOUTH CAROLINA

DATE: 8-23-24
PROJECT NUMBER 24600430

FIGURE NO. 8

Figure 9. Foundation of the main house, facing southeast.

Figure 10. One of the standing outbuildings, facing east.

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Figure 11. Enclosure attached to barn and one barn footer, facing northeast.

Figure 12. Barn footer, facing north.

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Drawing Path: T:\Columbia-1610\Projects\2024\24610375_Sparro_Anderson Reserve_Anderson SC\EM\GIS\Figures\Figure 13 - Geophysical.mxd plotted by KNeglia 08-23-2024

Geophysical Survey Focus Area

ANDERSON RESERVE
ANDERSON COUNTY, SOUTH CAROLINA

DATE: 8-23-24

PROJECT NUMBER 24600430

FIGURE NO. 13

Figure 14. Area of interest behind the barn after vegetation clearing, facing southwest.

Figure 15. EM portion of geophysical survey of area behind barn, facing southeast.

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Figure 16. GPR portion of geophysical survey of area behind barn, facing north.

Figure 17. Area of interest near spring head, facing east.

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Figure 18. GPR portion of geophysical survey of area near spring head, facing southeast.

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ELECTRONICALLY FILED - 2024 Sep 09 3:32 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

Drawing Path: T:\Columbia-1610\Projects\2024\24610375 Spano_Anderson Reserve_Anderson SC\ENV\GIS\Figures\Figure 19 - Area to avoid.mxd plotted by KNagle 08-23-2024

	Area of Avoidance		FIGURE NO.
	ANDERSON RESERVE ANDERSON COUNTY, SOUTH CAROLINA	DATE: 8-23-24 PROJECT NUMBER 24600430	19

www.REEDTECHINC.com
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(803) 750-9971
P.O. Box 61104
Columbia, SC 29260

Technical Report

Geophysical Evaluation for Unmarked Graves

Rivoli Plantation

La France, SC

Prepared For:

Kimberly Nagle, M.S., RPA

Senior Archaeologist/Project Manager S&ME

134 Suber Road

Columbia, SC 29210

Prepared By:

Reed Tech Utility and Geophysical Locating

PO Box 61104

Columbia, SC 29260

Submitted on: August 15thth, 2024

ELECTRONICALLY FILED - 2024 Sep 09 3:32 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

ELECTRONICALLY FILED - 2024 Sep 09 3:32 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

August 6th, 2024

Kimberly Nagle, M.S., RPA
Senior Archaeologist/Project Manager S&ME
134 Suber Road
Columbia, SC 29210

Re: Geophysical Evaluation for Unmarked Graves

Dear Ms. Nagle,

Reed Tech is pleased to submit this report of a geophysical evaluation of two areas of the Rivoli Plantation property near La France, in Anderson County, South Carolina completed on 8/6/24. Archived first-hand accounts suggest human burials may exist behind an old barn on the property. Using electromagnetic profiling and ground penetrating radar geophysical methods, the area behind the barn was evaluated. Another small area nearby has stones and other man-made features. For these reasons, this area was also evaluated. The study resulted in no evidence of unmarked graves. The following report reviews the methods and results of the geophysical evaluation.

Please do not hesitate to call if you have any questions concerning this report. We appreciate the opportunity to have collaborated with you on this project.

Sincerely,

Duke Brantley, PhD, PG
President
Reed Tech Utility and Geophysical Locating

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Background

The evaluation site is located on the old Rivoli Plantation near La France in Anderson County, SC. The evaluation areas were primarily hardwood forest with patches of understory and briars. Kimberly Nagle of S&ME contacted Reed Tech Utility and Geophysical Locating to assist in identifying unmarked graves in these areas. A geophysical evaluation was conducted on 8/6/24 by Duke Brantley of Reed Tech Utility and Geophysical. Archeology field director Paul Connell was onsite for S&ME. The area has topography and erosion terraces are present. It is unknown if this is the original land elevation or if the elevation has been changed over time due to natural erosion or to previous land altering activity such as terracing. Figure 1 is a site location map showing the approximate locations of the evaluation areas.

Figure 1: Site location map. The yellow polygons identify the approximate locations of the geophysical evaluations in Anderson County, SC for potential unmarked graves (Google Earth Pro).

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Technical Approach

Reed Tech completed the geophysical evaluations on August 6th, 2024, utilizing two geophysical methods to investigate the site:

Multifrequency Electromagnetic Profile Evaluation

A high-resolution electromagnetic profile (EMP) evaluation was completed using a GSSI EMP-400 multifrequency electromagnetic profiler. Two separate surveys were conducted both using three frequencies (10,000 Hz, 13,000 Hz, and 16,000 Hz) but different grids and orientation. The EMP data was collected on a hand-held Trimble Recon data logger that communicated with the EMP-400 unit via Bluetooth. The Trimble Recon has a GPS unit which is augmented by the Wide Area Augmentation System (WAAS) and is capable of high accuracy and real-time location data. The profiler was carried by hand approximately six inches above ground. The EMP method is useful at evaluating the shallow subsurface for both metallic and non-metallic conductive materials such as variations in soil conductivity which may be related to the presence/absence of graves.

Ground Penetrating Radar Evaluation

Reed Tech completed a detailed ground penetrating radar (GPR) evaluation over the site where accessible. Reed Tech utilized a Mala HDR radar unit outfitted with a 450 MHz antenna. Due to the near surface nature (< 6 feet) of typical graves, the 450 MHz antenna provides the optimum compromise between resolution and depth of penetration necessary to detect unmarked graves.

Results

The EMP and GPR data were analyzed and interpreted in the field and further analyzed in the office. None of the data display characteristics associated with graves.

Multifrequency Electromagnetic Profile Results

Reed Tech completed an EMP evaluation with parallel profiles around the entire property in two orientations. Once adequate survey coverage was achieved, the EMP field data were post-processed to produce a .dat file. These data were then processed using an inversion program to calculate the apparent conductivity and in-phase values for each EMP frequency collected (10,000 Hz, 13,00 Hz, and 16,000 Hz). The theme through most of the electromagnetic survey methods is that lower frequencies = deeper penetration at the cost of a courser resolution (targets need to be larger to

"resolve"). All acquired frequencies were processed and interpreted. Typically, the in-phase data (sometimes referred to as the metal detection mode) is more representative of buried metallic materials whereas the apparent conductivity (sometimes referred to as quadrature data) is more representative of non-metallic conductive variations in the subsurface. By evaluating both the in-phase and apparent conductivity response, the horizontal extents of the conductive and non-metallic subsurface anomalies can be characterized. Anomalies such as graves can often be identified by the contrast of the disturbed soils verses the surrounding undisturbed soils. No anomalies characteristic of graves were present in the two study areas for this project.

Ground Penetrating Radar Results

The GPR evaluation for unmarked graves was completed in two perpendicular X, Y, grids. Survey transects were spaced approximately two feet apart throughout the entire site where access allowed with existing vegetation/debris. No anomalies characteristic of graves were present in the two study areas for this project.

Conclusions

- Reed Tech completed a detailed electromagnetic profile (EMP) and ground penetrating radar (GPR) evaluation of the accessible evaluation areas.
- EMP data – no anomalies characteristic of graves were present.
- GPR data - no anomalies characteristic of graves were present.

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Limitations

The detection of subsurface objects is dependent upon parameters that include size, physical composition, depth of burial, and soil conditions. The combination of these parameters may produce a response that is below the detection threshold for a given geophysical method. Electromagnetic geophysical methods, including EMP and GPR, have inherent limitations due to site and/or ground conditions. It should be noted that geologically, the evaluation area is characterized by topography and terracing. It is unknown if natural or man-made processes have taken away or added material to the study areas. Reed Tech Utility and Geophysical Locating is not an archeological firm, and the work completed by us on this project was strictly geophysical in nature.

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ELECTRONICALLY FILED - 2024 Oct 28 9:16 AM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON *In the Matter of Spano & Associates, Inc., proposed intervenor, In re:* Hubert N. Smith, Jr. and Stanley Hix, Plaintiff/Appellant, v. Anderson County Planning Commission, Defendant/Respondent.	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT C.A. No.: 2024-CP-04-00975 **SPANO & ASSOCIATES, INC.'S MOTION TO INTERVENE**

PLEASE TAKE NOTICE that Spano & Associates, Inc. ("Spano"), by and through its undersigned counsel, moves before the Court pursuant to Rule 24(a)(2) of the South Carolina Rules of Civil Procedure ("SCRCP") for an Order permitting Spano to intervene in the above-captioned case for the purpose of protecting its interest as the owner of the land subject to the present dispute. A party seeking intervention under Rule 24(a)(2) "must: (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties." *Berkeley Elec. Co-op., Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990).

In support of said motion, Spano respectfully shows unto the Court as follows:

1. This Appeal was filed on May 7, 2024 by two adjacent landowners appealing the Anderson County Planning Commission's (the "Commission") approval of the Anderson Reserve Development project (the "Project") at its April 9, 2024 meeting.

2. Spano, as the owner of the property in dispute, was a party to the April 9, 2024 Commission meeting and all previous Commission meetings regarding the Project, but was not named as a party to the Appeal.

3. After the Commission filed its answer on June 7, 2024, the Court filed an Order on August 30, 2024 granting the Appeal and remanding the matter back to the Commission (the "Order").

4. Particularly, the Court ordered the Commission to "consider and establish requirements *for the developers* to establish whether slave graves exist on the property." (emphasis added).

5. Further, the Court urged the Commission to consider allowing "Plaintiff's and their affiliates access to [Spano's property] for the purposes of doing so."

6. Thereafter, on September 9, 2024, the Commission filed a Motion to Reconsider the Order.

7. After a hearing on the Motion to Reconsider, the matter was continued for further consideration and discussion.

8. To date, the Motion to Reconsider remains under advisement with the Court, although the Court has indicated it intends to deny the Motion to Reconsider.

9. Under Rule 24(a) of the South Carolina Rule of Civil Procedure ("SCRCP"), an applicant can seek intervention either as a matter of right or with the court's permission. "Upon timely application anyone <u>shall</u> be permitted to intervene in an action (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action, and the disposition of the action may impair or impede their ability to protect that interest." (emphasis added). The court may also allow

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intervention "(1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common." Rule 24(b), SCRCP.

10. The South Carolina Supreme Court has conveyed a broad view of the Rule 24(a)(2) standard. *See Ex parte DeBordieu Colony Cmty. Ass'n, Inc.*, 442 S.C. 285, 290, 898 S.E.2d 179, 181-82 (Ct. App. 2024) (stating "[w]e interpret the rules to permit liberal intervention [when]…judicial economy will be promoted by the declaration of the rights of all parties who may be affected. Accordingly, we must consider the pragmatic consequences of a decision to permit or deny intervention and avoid setting up rigid applications of Rule 24(a)(2)").

11. Here, although Spano was involved in the underlying Commission meetings, it was not a party to the appeal. The relevant issue on the appeal was the Commission's decision to approve the project. Thus, at that time, Spano did not need to intervene in the appeal. However, after the Court's Order encouraged the Commission to grant Plaintiffs access to Spano's property, its interest in the appeal became evident. The subject order raising such an awareness is currently not final as the motion to reconsider remains under review by the Court. Thus, the only party subject to prejudice here would be the property owner, Spano, given the Court is considering ordering third-party access to the property without Spano's input. Spano's motion to intervene is timely given Spano's interest in the Appeal was not applicable until the reconsideration of the Court's order, which was heard on October 25, 2024.[1]

[1] A court must consider the following factors in determining whether a motion to intervene is timely: "1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; 2) the reason for the delay; 3) the stage to which the litigation has progressed; and 4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denying intervention." *Ex parte Reichlyn*, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993).

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12. Spano, as the landowner, has an undeniable interest in the property which is the subject of the action.

13. The impairment factor is not designed to be a difficult standard.[2] 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.

14. The final factor is also a "minimal standard."[3] As such, Spano asserts its interest is inadequately represented by the other parties. Here, the Anderson County Planning Commission is not the property owner whose property value and potential use are being threatened by the decision at hand. Thus, they cannot adequately represent Spano's interest in the present controversy.

WHEREFORE, Spano respectfully requests an Order granting its motion to intervene to allow Spano to protect its interests. In support of this motion, Spano relies upon the evidence on the record, the applicable law, additional memoranda, affidavits, or documentation as may be filed or submitted to the Court, and any oral arguments the Court shall hear.

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[2] *See Ex parte DeBordieu Colony Cmty. Ass'n, Inc.*, at 291, 898 S.E.2d at 182 ("a party need not prove that it would be bound in a res judicata sense by the judgment, only that it would have difficulty adequately protecting its interests if not allowed to intervene.").

[3] *See Id.* ("the applicant need only show that the representation of his interests 'may be' inadequate.").

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s/Ronald G. Tate, Jr.
Carter R. Massingill (SC Bar No. 101802)
Ronald G. Tate, Jr. (SC Bar No. 5475)
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Attorneys for Spano & Associates, Inc.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	CASE NO.: 2024-CP-04-00975
Hubert N. Smith, Jr. and Stanley Hix,	)	
	)	
Plaintiffs,	)	
	)	**ANDERSON COUNTY PLANNING COMMISSION'S MOTION TO DISMISS**
v.	)	
	)	
	)	
Anderson County Planning Commission,	)	
	)	
Defendant.	)	
	)	

TO: JAMES G. CARPENTER, ATTORNEY FOR THE PLAINTIFFS:

PLEASE TAKE NOTICE that the Anderson County Planning Commission (the "Planning Commission"), by and through its undersigned counsel, will appear before the Court at the Anderson County Courthouse, not before the tenth day following service hereof, or at such other time and place as may be designated by the Court, and request an Order dismissing this appeal from the Anderson County Planning Commission.

This motion is made pursuant to the South Carolina Rules of Civil Procedure, including, without limitation Rules 12(b)(1), (7), SCRCP, and is based upon the Plaintiffs' failure to name the successful permittee[1] and property owner, Spano & Associates Asheville, LLC ("Spano"), as a party to this appeal. A permittee, such as Spano, is a necessary party to an appeal of a planning commission decision to the Circuit Court. *See* F. Patrick Hubbard, *A Guide to South Carolina Zoning Law*, 75 S.C. L. Rev. 281, 327–28

[1] *See Spanish Wells Prop. Owners Ass'n, Inc. v. Bd. of Adjustment of Town of Hilton Head Island, 295* S.C. 67, 68, 367 S.E.2d 160, 161 (1988) (noting that owner-applicants are permittees and necessary parties because owners hold the most vital interest in the appeals process).

(2023) (**the failure to serve the permittee within the relevant time frame <u>will result in dismissal of the appeal</u>**, because "the timeliness of an appeal from a zoning board's decision is a jurisdictional requirement and, as such, **may be raised at any time** by either party or sua sponte by the court) (emphasis added) (citing *Vulcan Materials Co. v. Greenville Cnty. Bd. of Zoning Appeals*, 342 S.C. 480, 489, 536 S.E.2d 892, 896 (Ct. App. 2000)).

Here, Spano was clearly a party to the proceeding before the Planning Commission because it was the applicant for the preliminary plat approval of the Anderson Reserve conservation subdivision. Spano was not served with the appeal documents within thirty days of the mailing of the decision of the Anderson County Planning Commission. Therefore, this appeal is untimely because Plaintiffs failed to include Spano as a proper party. *See* Rule 74, SCRCP (recognizing that statute governs the procedure on appeal to the circuit court from the decision of inferior tribunals and states that "[n]otice of appeal to the circuit court **<u>must</u>** be served on all parties within thirty (30) days after receipt of written notice" of the decision from which appeal is made) (emphasis added). Accordingly, because Plaintiffs' appeal is untimely, this Court does not have jurisdiction to decide the appeal on the merits. It should therefore be dismissed.

This motion is also based upon the pleadings and other filings on the record in this action, the applicable law, and any memoranda of law that the Planning Commission may file in advance of any hearing on this Motion.

HOLCOMBE BOMAR, P.A.

s/ A. Todd Darwin
A. Todd Darwin
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(864) 594-4300 (Phone)
(864) 585-3844 Fax
tdarwin@holcombebomar.com

Attorneys for Defendant Anderson County Planning Commission

Spartanburg, SC
October 28, 2024

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Hubert N. Smith, Jr. and Stanley Hix, *Plaintiffs/Appellants*, v. Anderson County Planning Commission and Spano & Associates, Inc., *Defendants/Respondents*.	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT Civil Action No. 2025-CP-04-00328 **SPANO & ASSOCIATES, INC.'S PRE-HEARING BRIEF**

This appeal merely seeks to wrongfully delay the rights of a property owner who has gone above and beyond what is required by the law. For this reason and those herein, Respondent Spano & Associates, Inc. ("Spano") submits that the January 14, 2025 decisions made by the Anderson County Planning Commission ("Planning Commission") should be affirmed, and this frivolous appeal should be dismissed.

INTRODUCTION

This Court already dismissed Appellants' first appeal[1] from the approval of a preliminary plat for the Anderson Reserve subdivision project ("Neighborhood") "**with finality**."[2] In doing so, this Court explained:

[1] A chronological outline of the procedural history in the first appeal ("First Appeal") and this improper second appeal ("Second Appeal") is attached for reference as **Exhibit 1.**

[2] *See Hubert N. Smith Jr. and Stanley Hix v. Anderson Cnty. Planning Comm'n*, No. 2024-CP-04-00975, at *4 (Anderson Cnty. Com. Pl. Feb. 21, 2025) ("Because Plaintiffs' appeal is untimely . . . Plaintiffs' appeal is hereby dismissed with finality.") (citing Rule 74, SCRCP to explain that "[n]otice of appeal to the circuit court . . . **must** be served on **all parties** within thirty (30) days after receipt of written notice" of the decision from which appeal is made (emphasis added). Despite telling the Court that they planned "to appeal this Decision," **Appellants never bothered**

> [Respondents] did what they were supposed to do, and that's it. Mr Carpenter, I have very little review powers of the commission's orders. You know that. I know that. I sent it back probably ultra vires in some sense. I didn't have power to do that, but I did. They've done it. **And so I'm dismissing your appeal based on the fact that <u>they've done what they were supposed to do</u>**. Okay? If there are any other grounds, you want some stated grounds, tell me what they are and I'll grant them.

(*Id*., at 17:4-17) (emphasis added). Likewise, this Court found that Respondents "**<u>went above and beyond what was necessary</u>**" and concluded that "[**<u>t]here's nothing else for us to fight about back here</u>**." (*Id*., at 14:2; 15:18-21) (emphasis added). But Appellants refuse to accept this Court's ruling. (*See* Notice of Appl., p. 9) (asking the Court to rule that the Planning Commission's January 14, 2025 decision was improper). Appellants now improperly re-raise many of the same issues that failed to persuade this Court in the First Appeal.[3] Though tellingly, they deemphasize any alleged failure to comply with S.C. Code § 27-43-10 (the "Cemetery Statute") because they know Spano has complied with the law.[4]

Appellants now abuse this appellate process with more spurious procedural maneuvering—disguised as the Second Appeal—in pursuit of Stanley Hix's true goal: blocking the construction

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to do so. (*See* Hearing Transcript, Feb. 6, 2025, at 15:22-24) (emphasis added). A complete copy of the February 6, 2025 Hearing Transcript is attached for reference as **Exhibit 2**.

[3] In the First Appeal, Appellants offered the following grounds: (1) **failure to comply with statutes related to burial grounds**; (2) violation of the Freedom of Information Act; (3) commissioner conflict of interest; (4) **violation of Anderson County Ordinance** [§ 24-367, relating to "final plats"]; and (5) failure to fulfill duty to vote. *See Hubert N. Smith Jr. and Stanley Hix v. Anderson Cnty. Planning Comm'n*, No. 2024-CP-04-00975, at *1-2 (Anderson Cnty. Com. Pl. Aug. 30, 2024). This Court's August 30, 2024 Order dismissed all but one of Appellants' grounds for appeal in the First Appeal (failure to comply with statute related to burial grounds). (*Id.*, at *2). This Order is attached for reference as **Exhibit 3**. Now, Appellants re-raise the same issues that were dismissed early in the prior action and which were not appealed—concerning alleged violations of Anderson County Ordinances and complaints about the inadequacy of the public meeting/published agenda. (*See generally, id*.).

[4] *See* Notice of Appl., ¶¶ 21-22. These are the only paragraphs in the Second Appeal referencing this area of the Code (alleging in conclusory fashion that Spano "failed to comply with the statutory prerequisites for dealing with graves and burial sites.").

of the Neighborhood across from his family's land, at whatever cost.[5] Unphased by this Court previously telling them that the Planning Commissioners did "what they were supposed to do" in reaching the January 14, 2025 Decisions, [6] Appellants now effectively ask this Court to reverse its prior decision in asking for the following relief:

> **WHEREFORE**, having fully pled, the Plaintiffs pray the Court for the following:
>
> 1. That the Court rule that the adoption of the foregoing motion on January 14, 2025, was arbitrary and capricious and an abuse of discretion
> 2. That the Court reverse the Commission's Decision for failure to comply with the law and ordinances, as alleged herein;

(Notice of Appl., p. 9) (Appellants' Request for Relief).

A plain reading of the transcript from the January 14, 2025 Planning Commission meeting, however, proves that there was more than sufficient evidence—**including evidence provided by the Appellants' own experts**—to support the Planning Commission's determinations. Therefore, this Court should uphold the Planning Commission's January 14, 2025 Decisions and this appeal should be dismissed (again).

LEGAL STANDARD

The trial court must uphold a decision by a county 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)

---

[5] A copy of the latest site plan for the Neighborhood, along with enlarged sections highlighting the Hix family land, is attached as **Exhibit 4** for reference.

[6] On January 14, 2025, the Planning Commission (1) unanimously found that Spano "went above and beyond to determine if there were any grave sites on the property"; and (2) unanimously voted to reaffirm the April 9, 2025 Decision approving the preliminary plat for the Project. These two unanimous decisions shall be collectively referred to as the "January 14, 2025 Decisions." The relevant excerpt from the January 14, 2025 meeting minutes is attached for reference as **Exhibit 5**.

(citing *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 173, 656 S.E.2d 346, 351 (2008); S.C. Code Ann. § 6-29-840 (2005)). The court is not free to substitute its judgment for that of the commission. *Alliance to Preserve the Old White Horse Road Corridor, LLC v. RP&L, LLC*, No. 2021-CP-23-03048, 2022 WL 20804832, at *1 (Greenville Cnty. Com. Pl. Aug. 17, 2022) (citing *Floyd*, 403 S.C. at 476; *Kurschner*, 376 S.C. at 173-74 (applying the "any evidence" standard of review applicable in appeals of jury verdicts to appeals of planning commission decisions). **The "any evidence" standard of review is the <u>most deferential standard of review recognized by South Carolina's courts</u>**, and planning commissions receive this deference because of the South Carolina Supreme Court's recognition of "the legislature's intent [to grant] a planning commission broad discretion in this area." *Id.*, citing *Kurschner*, 376 S.C. at 173-74 (emphasis added).

ARGUMENT

Appellants falsely represent to this Court that the "most current rendering of" the Neighborhood "shows that lots 107-111, and lots 117-121 and the road Spanish Oak Court will level … 'Graveyard Hill.'" The true and most current rendering of the Neighborhood plan ("Revised Site Plan"), however, is attached for reference as **Exhibit 4**.[7] There are several notable features about this Revised Site Plan relevant to this Second Appeal:

- It clearly shows that the protected gravesite area—which Appellants refer to as "Graveyard Hill"—will not be "leveled";
- It shows that the protected gravesite area will be in "Open Space" contrary to Appellants' false contention otherwise. (See Notice of Appl., ¶ 53); and

[7] (*See* Notice of Appl., ¶ 1) ("[Appellants] . . . own property near a development project called Anderson Reserve that was approved by [the Planning Commission] on April 9, 2024 and approved again on January 14, 2025").

- Since the January 14, 2025 Decisions, this Revised Site Plan has gone through several rounds of review and comments with all appropriate Anderson County departments (e.g., Stormwater, Roads and Bridges, Sanitary Sewer, etc.).

Appellants also wrongly claim that the January 14, 2025 Decisions required public hearing or comment.[8] Once a preliminary plat is approved by the Planning Commission, the law does not require any additional public hearing. *See* §§ 24-335(5);[9] 24-337(3).[10] This is consistent with the excerpt from the meeting minutes below:

> DAN HARVELL: Okay. All right, we have gone into executive session.
> The first, the first issue dealt with a legal matter, an appeal that was filed based on the, based on the finding -- or the decision of the Planning Commission previously. We do not have -- this is not a public hearing time, so there was not any sign up for this. This was just a decision that had to be made by the board based on what happened in the court proceedings following the appeal.

Likewise, any argument that the Revised Site Plan required a further vote by the Planning Commission, or any public meeting, would also be wrong. In fact, changes to preliminary subdivision plats may be (and routinely are) approved at the staff level without any further

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[8] *See, e.g.*, Notice of Appl., ¶¶ 38-41, 44.

[9] Section 24-335(5) states, in pertinent part: "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 government agencies must be obtained, including, but not limited to, stormwater permits from county stormwater managements and the Department of Health and Environmental Control, which must be obtained prior to beginning land disturbing activity." (emphasis added).

[10] Section 24-337 states, in pertinent part: "The following **supplemental information**, where applicable, shall be submitted **after** approval of the preliminary plat: … (3) The proposed stormwater management and sediment control plan, as submitted to county stormwater management and/or DHEC … Upon receipt of the approved plan from county stormwater management and DHEC, and prior to commencement of grading, the approved plan shall be submitted to the subdivision administrator. (emphasis added). Note that the "approved plan" is submitted to the subdivision administrator—not to the Planning Commission.

involvement by the Planning Commissioners. *Id.* Requiring Anderson County to organize a public hearing for every change to any preliminary plat would be logistically impossible, which is why neither state law nor local ordinance requires it.

In making its January 14, 2025 Decisions, the Planning Commission did exactly what this Court asked (and more). For reference, this Court's August 30, 2024 Order in the First Appeal initially instructed the Planning Commission to "consider and establish requirements for the developers to establish whether slave graves exist on the property." (*See* Ex. 3, p. 2). Then on November 20, 2024, this Court ruled:

> [T]he best course of action would be to remand this matter to the Anderson County Planning Commission, with the *suggestion* that the Planning Commission should require adequate testing to determine whether graves of enslaved persons are on the premises. This *suggestion includes* determining the following:
>
> 1. Whether the developer actually tested for graves of enslaved persons,
> 2. Whether the process used would yield the best results,
> 3. Whether the area tested was sufficient, and
> 4. Whether Appellant and its representative should be allowed onto the premises to conduct testing.[11]

In response, Respondents' archeologist, Kimberly Nagle, M.S., RPA, of S&ME Inc. ("S&ME"), conducted a subsequent investigation and incorporated the same information generated from the very reports prepared by Appellants' own consultants, Preservation South, LLC ("Preservation South") and New South Associates ("New South"). Ms. Nagle's report ("December Report") is attached for reference as **Exhibit 7**.

After surveying and testing the additional areas identified by Appellants' own consultants ("Area 1" and "Area 2") and further testing, S&ME made the following findings:

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[11] *See Hubert N. Smith Jr. and Stanley Hix v. Anderson Cnty. Planning Comm'n*, No. 2024-CP-04-00975, at *2-3 (Anderson Cnty. Com. Pl. Nov. 20, 2024).

- Area 1 and the Initial Avoidance Area have a low probability of containing graves and therefore no additional archaeological work or avoidance in those areas is recommended.

- Area 2 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 with the cemetery of the buffer.[12]

In response to these findings, Spano directed Seamon Whiteside & Associates, Inc. ("SW") to prepare the Revised Site Plan to reflect S&ME's findings concerning Area 2. (*See* Ex. 4). As shown below, the December Report and Revised Site Plan were forwarded to counsel for the Planning Commission in advance of the January 14, 2025 Planning Commission Meeting:

Carter Massingill <cmassingill@
To Todd Darwin
Cc Ron Tate
1/7/2025
Anderson Reserve Additional Investigations 12-23-2024.pdf
.pdf File
2025-01-07 Site Plan V2.pdf
.pdf File

Todd,

Please find the attached updated report concerning the location of potential burial sites, as well as the revised site plan prepared by Seamon Whiteside. The revised site plan includes a 30' buffer around the area and a fence. I believe this should resolve this issue completely.

Please let me know if you have any questions.

This, along with the minutes from the January 14, 2025 Planning Commission Meeting, shows that Appellants cannot sustain their burden to overcome the "any evidence" standard. As a corollary, the Planning Commission's counsel rightly acknowledged in the First Appeal's February 6, 2025 hearing that all relevant studies were considered in arriving at the January 14, 2025 Decisions:

[12] (*See id.*, p.3).

> Mr. Darwin: And all the studies, both Mr. Carpenter's study and both of these Spano & Associates studies. The one prior, after they took their information and did second report, I'll call it, all that was provided to the commission …
>
> The Court: Very good. **Mr. Carpenter, I mean, <u>you got what you asked for</u>**.[13]

After considering the information provided by Appellants' own consultants, which in turn was incorporated and adopted by the December Report and Revised Site Plan,[14] the Planning Commission unanimously found that Spano went above and beyond to determine whether there were any grave sites on the Property. (*See* Ex. 5).

In short, the Planning Commission did precisely what the Court suggested it do: consider whether Spano adequately investigated the issue of grave sites, and Appellants got exactly the relief they requested, i.e., they were able to conduct their own investigations with their own experts. (*See* Ex. 6, at *2-3).

In addition, Spano seeks to protect and preserve the grave and burial sites. A copy of the draft Protective Covenants to ensure that the land remains undeveloped is attached for reference as **Exhibit 7**.[15] Spano has gone above and beyond what is required by state law in the Cemetery Statute.

Moreover, Appellants' contention that the January 14, 2025 Decisions fail for lack of what they refer to as a "master plan" or "master plat" is meritless because a "final plat" pursuant to §

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[13] (*See* Ex. 2, at 12:7-15) (emphasis added).

[14] Any allegation in the Complaint that the Planning Commission did not adequately review the studies is meritless. This includes, but is not limited to, paragraphs 42, 43, and 46 of the Appeal. Planning Commission's legal counsel had the report a week before the January 14 meeting. Moreover, the Planning Commission need not "consider" or "require" every conceivable course of action in order to make a lawful decision. (*See*, e.g., Compl., ¶¶ 41-46, 52-54, 56).

[15] Respondents have complied with, and in fact, exceeded, the requirements for "open space" as specified in Anderson County Ordinances § 24-401 (7).

24-367 is not yet required.[16] As noted above, the final plat is not submitted for approval until all comments from the relevant departments have been addressed. And regardless, this Court already rejected this argument in the First Appeal, and Appellants did not appeal that decision. (*See* Ex. 7, at *2). Therefore, each allegation in the Second Appeal regarding any "master plan" or "master plat" is erroneous and irrelevant.[17]

CONCLUSION

Spano went above and beyond to investigate, protect and preserve the grave site found on its property and this Court has already acknowledged the same. The Planning Commission lawfully made its January 14, 2025 Decisions based on ample evidence—which notably included Appellants' own reports. Accordingly, the Planning Commission's January 14, 2025 Decisions more than satisfy the highly deferential "any evidence" standard. Appellants' Second Appeal is frivolous and should be dismissed.

GALLIVAN, WHITE & BOYD, P.A.

s/Ronald G. Tate, Jr.
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June 1, 2025

Attorneys for Spano & Associates, Inc.

[16] Note that the terms "master plan" and "master plat" used by Appellants in their Appeal are not terms used in Section 24-367. Instead, "final subdivision plat" is the term used in the Ordinance, as quoted above.

[17] This includes, but is not limited to, paragraphs 47, 48, 50, and 51 of the Complaint.

Relevant Procedural History of First and Second Appeals

Date	Event
April 9, 2024	The Planning Commission approved the preliminary plat for Anderson Reserve.
May 7, 2024	Appellants filed the First Appeal. Spano, the owner of the property, was not named a party to the appeal.
August 30, 2024	This Court entered an Order rejecting all grounds allegedly supporting the First Appeal, except for the Cemetery Statute ground. The Court remanded the case back to the Planning Commission, "urging" it to consider allowing Appellants to conduct further testing.
September 9, 2024	The Planning Commission filed a rule 59 motion to alter or amend the August 30, 2024 Order. In support, the Planning Commission stated that Spano had hired a third party to conduct an investigation and prepare a report.
October 16, 2024	A hearing on the rule 59 motion took place. A form 4 Order was issued which stated that the "order does not end the case." Spano was not yet a party to the case.
October 28, 2024	Spano filed its Motion to Intervene.
October 29, 2024	The Planning Commission filed a Motion to Dismiss for, among other things, failure to join a necessary party.
November 20, 2024	A formal Order denying the rule 59 motion was filed. Therein, the Court urged the Planning Commission to take the Court's suggestion to consider the criteria for determining whether the issue was adequately investigated.
December 10, 2024	This matter was scheduled on the Planning Commission agenda. However, the day before the hearing, at 5:23 P.M., the appellant emailed a letter to the Planning Commission. Among other things, this email attached (1) a copy of a letter to the Court, dated October 25, 2024, from the appellant's own expert, which attached a report; and (2) another report dated October 28, 2024. Because of these new developments, Spano withdrew the matter from the December agenda. Spano then provided this new information to its own archaeologist. Spano's archaeologist incorporated those findings, and generated a new report memorializing that information. Thereafter, Spano revised the subdivision plan to accommodate this new information.
January 14, 2025	This matter was back on the Planning Commission agenda. Prior to the meeting, the Planning Commission received Spano's updated report and subdivision plan. The Planning Commission already had Appellants' reports. The Planning Commission went into executive session. After the executive session, and back on the record, the Planning Commission noted this Court's specific directive, and then stated that it had reviewed and considered each report. **The Planning Commission then voted unanimously that: (1) Spano had gone "above and beyond" what**

	was required; and (2) to reaffirm their prior April 9, 2024 decision approving the preliminary plat for the Project.
February 6, 2025	The Court held a hearing on Spano's Motion to Intervene and the Planning Commission's Motion to Dismiss. Both motions were granted. The Court reasoned that: "**I'm dismissing your appeal based on the fact that [Respondents have] done what they were supposed to do**."
February 13, 2025	Appellants filed the Second Appeal.
February 21, 2025	A formal Order granting Spano's Motion to Intervene and dismissing the First Appeal was filed.

1 STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
2 COUNTY OF ANDERSON

3
Hubert N. Smith, Jr.,
4
Plaintiff,
5
vs. Transcript of Record
6 2024-CP-04-00975

7 Anderson County Planning Commission,

8 Defendant.

9

10

11 February 6, 2025
Anderson, South Carolina
12

13 B E F O R E:

14 The HONORABLE R. LAWTON MCINTOSH

15
A P P E A R A N C E S:
16
James Carpenter, Representing the plaintiff
17
Carter Massingill, Representing intervener Spano &
18 Associates

19 A. Todd Darwin, Anderson County Planning Commission

20

21

22

23

24 SHARON G. HARDOON, CSR
Official Circuit Court Reporter, III
25

1 THE COURT: Hubert N. Smith vs. Anderson
2 County Planning Commission. This is a motion to
3 intervene; is that right?
4 MR. MASSILGILL: Yes, Your Honor.
5 THE COURT: Okay. Which case is this
6 one, please, sir?
7 MR. MASSILGILL: This is *Hubert N. Smith*
8 *and Stanley Nix vs. Anderson County Planning*
9 *Commission*. My name is Carter Massingill. I
10 represent the proposed intervener, Spano &
11 Associates.
12 THE COURT: Okay. Is this the matter
13 that was before us before?
14 MR. CARPENTER: Yes, Your Honor.
15 THE COURT: That had potential slave
16 graves; is that right?
17 MR. MASSILGILL: Yes, Your Honor.
18 THE COURT: And your client is the one
19 that everybody was to go out and look at the
20 property and at the last minute he put a trespass
21 notice that they would not be allowed to come on
22 the property; is that right? That is right? I
23 know it is, because that's what you did.
24 So why should I allow you to intervene is
25 this action?

1 MR. MASSILGILL: Just because the appeal
2 is still pending, and it's my client owns the
3 property, Your Honor. And I was prepared before
4 to put it in writing, the motion to intervene, to
5 just, kind of, briefly update the Court on what's
6 happened.
7 THE COURT: Sure, sure.
8 MR. MASSILGILL: Since we were last
9 together.
10 So, briefly, Your Honor, just to, kind
11 of, recap. So the original decision that started
12 this appeal was back in April 9th of 2024. The
13 appeal was file by -- on May 7, 2024. My client,
14 the property owner, was not named as a party to
15 the appeal.
16 Your Honor issued an initial order on
17 August 30, '24, where Your Honor rejected five of
18 the grounds on appeal but remanded it back to the
19 planning commission on one ground urging them to
20 consider allowing the appellate to conduct their
21 own testing. The planning commission then filed a
22 Rule 59 motion to that first order.
23 And one of the arguments that was raised
24 was that there had been a test performed by my
25 client. The appellate filed their opposition

1 arguing that that court was not sufficient.
2 There was a hearing on that Rule 59
3 motion. My client was not at that hearing. We
4 are not represented at that hearing because we
5 weren't a party to the case. That was the hearing
6 where I believe Your Honor directed that there is
7 10 days for them to work out going out to conduct
8 their own tests.
9 I found out about that after the hearing,
10 and that's when I started asking what was going on
11 and we had some conferences with the counsel and
12 the Court.
13 And then ultimately --
14 THE COURT: Well, hang on for a second.
15 I mean, you were here before these other hearings,
16 at least some. I remember you being here and
17 having discussions about these people wanting to
18 go out and look at this property. And, at that
19 last minute, after everybody been talking about
20 it, your client says, no, they come out there
21 they're going to be arrested for trespass. That's
22 my recollection in this case.
23 MR. MASSILGILL: Your Honor, we had calls
24 with Your Honor via Webex, but I've never appeared
25 in the courtroom. That's what I was saying.

1 THE COURT: Well, you were aware. You
2 were certainly aware and you were here, either on
3 Webex or here. But your face is very familiar. I
4 remember you being part of something here.
5 Anyway --
6 MR. MASSILGILL: Certainly, Your Honor.
7 That is accurate. Now I'm getting to the point to
8 what has happened since we were last together.
9 THE COURT: Okay, sure.
10 MR. MASSILGILL: So, ultimately, Your
11 Honor, as you said, in the Webex conference it was
12 said that the case was going to be remanded back
13 to the planning commission because of the
14 trespassing notice, and so then that same day is
15 when we filed the motion to intervene. On the
16 docket it says that it was entered three days
17 later, but we filed a notice of technical
18 difficulty showing that we tried to file the same
19 day.
20 THE COURT: Okay.
21 MR. MASSILGILL: So the planning
22 commission then filed a motion to dismiss which is
23 the next motion on the roster, but what I'm
24 getting to, Your Honor, is on November 13th Your
25 Honor issued a form-4 order which noted it did not

1 end the case. And that was where Your Honor wrote
2 out a new form-4 order, while you were sending it
3 back to the planning commission the things that
4 you wanted them to consider specifically and ask
5 Mr. Carpenter to prepare the proposed order.
6 November 20th, that formal order was
7 filed and it incorporated Your Honor's language
8 from the form 4 and so the matter was back on the
9 planning commission agenda December 10, 2024.
10 The day before that hearing at about 5:30
11 p.m. counsel for the appellate emailed a letter to
12 the planning commission. I believe Your Honor was
13 copied, or your staff was copied on that email,
14 but had attached several things. One was their
15 own report that they created after sending their
16 own folks out onto the land and they did create
17 their own report. That report was dated about a
18 month and a half earlier back on October 28th,
19 which is when we had all this back and forth on
20 the Webex, Your Honor. So we got that the night
21 before the planning commission.
22 So my client withdraws the application
23 from that agenda.
24 THE COURT: They withdraw the application
25 for what, please, sir?

1 MR. MASSILGILL: From the December
2 agenda, Your Honor.
3 THE COURT: Okay.
4 MR. MASSILGILL: Because they got this
5 report that they prepared after going on the
6 property from their own folks.
7 THE COURT: Got you.
8 MR. MASSILGILL: We take that report and
9 all that information, give it to our firm and to
10 our archeologist and say, *Hey, look, we have all*
11 *this new information* --
12 THE COURT: Well, did the reply -- I did
13 not have it and I was not copied, to my knowledge,
14 with it. What did the report find?
15 MR. MASSILGILL: They found that they
16 thought there was a different spot on the property
17 that was indicative of potential graves sites.
18 THE COURT: Were any found?
19 MR. MASSILGILL: That's exactly what I'm
20 getting to, Your Honor.
21 We gave all that information to our own
22 archeologist and said, *Hey, go look at this.* So
23 they go out there, do another investigation of the
24 property, take all their own information, create a
25 new report, incorporate all of the information

1 into their report. So, basically, look everything
2 they said as true. And we do find an area that
3 our archeologist said they believe was indicative
4 of a former grave site. They didn't find any
5 remains or evidence, but they said, *We do believe*
6 *this is indicative of a grave site.*
7 We revised our plan to accommodate that
8 and do what we were supposed to do per the statute
9 to not disturb that area. Provided -- and then we
10 created a report that says, *Hey, we investigated*
11 *everything they provided. We found this.*
12 And so --
13 THE COURT: Did you use -- I know at one
14 point there was some disagreement as to type of
15 imaging that was going to be used.
16 MR. MASSILGILL: Well, Your Honor, we
17 found -- we went and found places that they
18 identified. We actually did what they call
19 trenching where they make small digs in certain
20 areas.
21 THE COURT: I don't know what that is.
22 MR. MASSILGILL: I'm just explaining to
23 you what's in the report, Your Honor.
24 THE COURT: Sure.
25 MR. MASSILGILL: To summarize, all that

1 information, their new report that they paid for
2 and conducted themselves, the subsequent report
3 that took all that information, took it as true
4 and revised our plan accordingly, all that was
5 provided to the planning commission. So then
6 January 14th, last month, it was on the agenda.
7 There was an executive session where the planning
8 commission's counsel, I assume, discussed the
9 appeal with them and what Your Honor directed them
10 to do, what the Court tasked the planning
11 commission to do.
12 We obviously don't go sit in the
13 executive session, but they came back out on the
14 record and the planning commissioners stated on
15 the record exactly what the Court asked it to do.
16 They noted each report, they considered all the
17 reports, and they all voted unanimously to say
18 that they believed that the developer/owner had
19 gone above and beyond to investigate and determine
20 whether or not there were former grave sites on
21 the property.
22 Then they voted again in a second vote
23 that was unanimous to say that they were
24 reaffirming their prior decision to approve the
25 plan.

1 THE COURT: When your client changed
2 plans, did it take into consideration these areas
3 that were potentially slave graves and exclude
4 them from development?
5 MR. MASSILGILL: Yes, Your Honor.
6 THE COURT: Okay. How many graves were
7 there, did they say?
8 MR. MASSILGILL: I don't think there's
9 any way for them to know.
10 THE COURT: There's no number. Okay.
11 MR. MASSILGILL: They just find these
12 field stones and certain things about the soil
13 that made them believe it. And then based on the
14 literary surveys they did, the library and things
15 like that, and taking their information is how
16 they really found this spot.
17 So that brings me to last week. These
18 motions were coming up on the hearing. We got
19 notice from the Court that said if you need a
20 continuance let us know by X date. Mr. Darwin
21 reached out to counsel and said, Hey, we don't yet
22 have the published minutes from that January
23 meeting yet. I believe next week is when they
24 should be published and approved because the next
25 planning commission meeting is next week. And

1 Mr. Darwin asked that we continue this hearing to
2 the next term so we can put the published minutes
3 in the record for Your Honor to see exactly what
4 the planning commission did.
5 Mr. Carpenter said he didn't believe that
6 was appropriate because he thought that these two
7 motions were moot. I asked him, if that was the
8 case, was he going to dismiss the appeal or do we
9 need to have a hearing today. I never got a
10 response to that, so we're here.
11 So all I have to say, Your Honor, I'm
12 prepared to argue the motion to intervene. But I
13 just want to let the Court know from our
14 perspective, the appellate got exactly what they
15 asked for. They got to prepare their own report
16 with their own investigation, and then the
17 planning commission did exactly what the Court
18 asked it to do.
19 THE COURT: All right.
20 MR. MASSIELGILL: So that moves into my
21 motion to intervene, if you'd like to hear that.
22 THE COURT: Thank you, sir. I appreciate
23 that.
24 From the County perspective.
25 MR. DARWIN: Well, I got a motion to

1 dismiss on a purely procedural matter.
2 THE COURT: Let's hear that later. Did
3 you disagree with anything?
4 MR. DARWIN: No, I didn't disagree with
5 anything Mr. Massingill just told the Court.
6 THE COURT: Okay.
7 MR. DARWIN: And all the studies, both
8 Mr. Carpenter's study and both of these Spano &
9 Associates studies. The one prior, after they
10 took their information and did second report, I'll
11 call it, all that was provided to the commission
12 before they were moot.
13 THE COURT: Very good.
14 Mr. Carpenter, I mean, you got what you
15 asked for.
16 MR. CARPENTER: Well, Your Honor, we
17 haven't seen any of this. This is the first we
18 heard of all this stuff.
19 What we were prepared to argue today, our
20 argument is these two motions, the motion to
21 intervene and the motion to dismiss which were
22 filed after the Court dismissed this and send it
23 back to the planning commission, which, in my
24 view, would render both of them moot and that case
25 is over with. They filed these motions after they

1 lost their case.

2 And now they come in with all this new

3 stuff, which they have not told us about until

4 now. It's certainly not been done publicly. It's

5 been done either in executive session or

6 privately. We haven't seen the first piece of

7 evidence of this, and this is the first we've

8 heard it. But we don't think this is properly

9 before the Court, these two motions, which we

10 think were filed after the case was over with and

11 are moot. That's the extent of our argument.

12 MR. DARWIN: Your Honor, if the case is

13 over with and they say that the appeal is

14 dismissed, we're fine with that, and that's what

15 we said. So if the case is over, it's over. But

16 the reason we --

17 THE COURT: They let me say this: The

18 motion to dismiss, the intervention claim, I'm

19 going to grant that.

20 I do think -- what I want -- I, quite

21 frankly, my concern, and I think your concern was

22 if there is actually potential for those graves to

23 be out there then they need to be checked. And if

24 they're checked out there, they need to be

25 protected because that's historic and we don't

1 want those to be ruined. That's what they did.
2 They went above and beyond what was necessary.
3 I told you at the time I didn't think I
4 really had jurisdiction to order that, but I asked
5 you to send it back and you did. So from a
6 procedural standpoint, you got what you asked for.
7 I think that -- I applaud your client for
8 doing what they're supposed to do. I appreciate.
9 But for today's hearing, I'm going to
10 grant your motion to dismiss that. That's it as
11 far as why I'm here today. I don't think there's
12 anything else, but I want you to understand those
13 are my thoughts about this case. Okay?
14 MR. MASSILGILL: Thank you, Your Honor.
15 MR. CARPENTER: What are you granting?
16 THE COURT: His motion to keep him out.
17 I think that's right. The motion to dismiss. You
18 asked for the motion to dismiss. His motion to
19 intervene --
20 MR. DARWIN: No, Your Honor. My motion
21 to intervene.
22 THE COURT: Correct me. I'll tell you,
23 I'm easily fooled up here, guys.
24 MR. DARWIN: My motion to dismiss was
25 because they were not included originally in the

1 appeal. So jurisdictionally, they should have
2 been and that's why the appeal should be
3 dismissed.
4 THE COURT: Oh, the appeal.
5 MR. DARWIN: They should have come in,
6 Your Honor. They own the property. They should
7 have been in from day one.
8 THE COURT: That's the first time you're
9 raising that. What's your position on that?
10 MR. CARPENTER: Like I said, they raised
11 both of these motions after the case was over,
12 after you already ruled. I think that they're
13 moot, and the Court shouldn't rule on them if
14 they're moot.
15 THE COURT: Let me just tell you this:
16 At this juncture, or whatever, I'm going to let
17 you. They're not going to complain about that.
18 But I think they did what they're
19 supposed to do. I wanted them to do that. They
20 have done it. There's nothing else for us to
21 fight about back here.
22 MR. CARPENTER: Well, we don't know. I
23 mean, we haven't seen any of that, Your Honor, and
24 we plan to appeal this decision.
25 THE COURT: You can appeal all you want

1 to, Mr. Carpenter, and we'll set it up such that
2 you can.
3 MR. DARWIN: That was my point for the
4 continuance, Your Honor, is all that's going to be
5 next week when the minutes are approved. They're
6 going to have all that. I couldn't provide that
7 until the minutes have been approved, to have all
8 the reports that were before the commission on
9 January 14th.
10 MR. MASSILGILL: Your Honor, just -- I
11 appreciate everything and listening to that
12 because I know it's a procedural thing to go
13 through everything and we've gone around and
14 around about this, but I didn't actually argue the
15 motion to intervene. I just, kind of, went
16 through the procedural history and I said I was
17 now ready to argue.
18 THE COURT: Well, do yourself a favor,
19 quit while you're ahead. Okay.
20 MR. MASSILGILL: Thank you, Your Honor.
21 THE COURT: That's what most lawyers do.
22 So I'm going to let you in. I'm going to
23 procedurally, I guess, grant your motion to
24 dismiss, that way you can appeal me if you want
25 to. I think the relief has been granted. I mean,

1 it has been fulfilled in the sense that I wanted
2 you to check for those things and they have been
3 done.
4 MR. CARPENTER: What's the basis for the
5 dismissal?
6 THE COURT: That they did what they were
7 supposed to do, and that's it.
8 Mr. Carpenter, I have very limited review
9 powers of the commission's orders. You know that.
10 I know that. I sent it back probably ultra vires
11 in some sense. I didn't have power to do that,
12 but I did. They've done it. And so I'm
13 dismissing your appeal based on the fact that
14 they've done what they were supposed to do. Okay?
15 If there are any other grounds, you want some
16 stated grounds, tell me what they are and I'll grant
17 them.
18 MR. DARWIN: Your Honor, the only other
19 grounds to grant my motion is, procedurally, it
20 can be raised at any time, even by the Court.
21 THE COURT: Okay.
22 MR. DARWIN: So I don't think it's
23 untimely as Mr. Carpenter argues. It's in my
24 motion --
25 THE COURT: Just prepare me an order.

1 Give it to Mr. Carpenter, look at it and see and
2 then we'll go from there.
3 Thank you, guys. Take care.
4 MR. MASSILGILL: Thank you, Judge.
5 (The hearing was concluded.)
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1 CERTIFICATE OF REPORTER

2

3 I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at
4 Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the
5 proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the
6 Court of Common Please, Anderson County, South Carolina.

7

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

10

11

12 May 26, 2025

13

14

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16 Sharon G. Hardoon

17 Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

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ELECTRONICALLY FILED - 2024 Aug 30 12:51 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400975

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	IN THE 10TH CIRCUIT
Hubert N. Smith, Jr. and Stanley Hix, Plaintiffs,	)	CASE NO: 2024-CP-04-00975
v.	)	**Order**
Anderson County Planning Commission Defendant.	)	

Plaintiffs appeal Anderson County Planning Commission's preliminary approval of Phase I & II of Anderson Reserve. Plaintiffs assert the following causes of action:

1) Failure to comply with the statute related to burial grounds,

2) Violation of the Freedom of Information Act,

3) Violation of the Freedom of Information Act (public meeting/published agenda),

4) Commissioner's conflict of interest,

5) Violation of Anderson County ordinance, &

6) Failure to fulfill the duty to vote

DISCUSSION

> "By statute, the trial court must uphold a decision by the Planning Commission unless there is no evidence to support it." . . . "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*).

The Planning Commission staff presented to the developer what is characterized as an "anecdotal comment" regarding the existence of graves and/or gravesites on the subject property.

[Anderson County Planning Commission Meeting Transcript, April 19, 2024, p.15]. There is no evidence in the record that the Planning Commission required anything of the developer to confirm whether the information was true.

Plaintiff Stanley Hix presented evidence by way of affidavit from a previous owner of the property that he was shown by his father the existence of slave graves in particular areas of the subject property.

The Planning Commission again required nothing of the developer to answer whether slave graves are present on the property. Upon being questioned by the Court, Plaintiffs agreed to bear the cost of testing to determine if grave sites exist.

The issue of the existence of slave graves and 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 required nothing from the developer to determine whether the 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.

Accordingly, the Court reverses the Planning Commission's approval of Phases I & II of Anderson Reserve and remands this matter back to the Commission to consider and establish requirements for the developers to establish whether slave graves exist on the property. Although the Court cannot require the Commission to do so, it urges the Commission to consider Plaintiff's offer to pay for the cost of testing and to allow Plaintiffs and their affiliates access to the premises for the purposes of doing so.

Plaintiff's first cause of action is held in abeyance.

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Plaintiff's causes of action 2-6 are denied. Plaintiff's cause of action number two (2) is denied as the meeting was properly noticed. Cause of action number three (3) is denied as the transcripts reflect public discussion and vote. Cause of action number four (4) is denied as the Commissioner in question is not an employee of AnMed. Cause of action number five (5) is denied as no violation was proven, and cause of action number six (6) is denied, as the same was not established.

Plaintiff's counsel is to prepare a formal order.

SO ORDERED.

_____

Lawton McIntosh, Circuit Judge

August _____, 2024

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Anderson Common Pleas

Case Caption: Hubert N Smith Jr. , plaintiff, et al VS Anderson County Planning Commission

Case Number: 2024CP0400975

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-08-30 12:43:29 page 4 of 4

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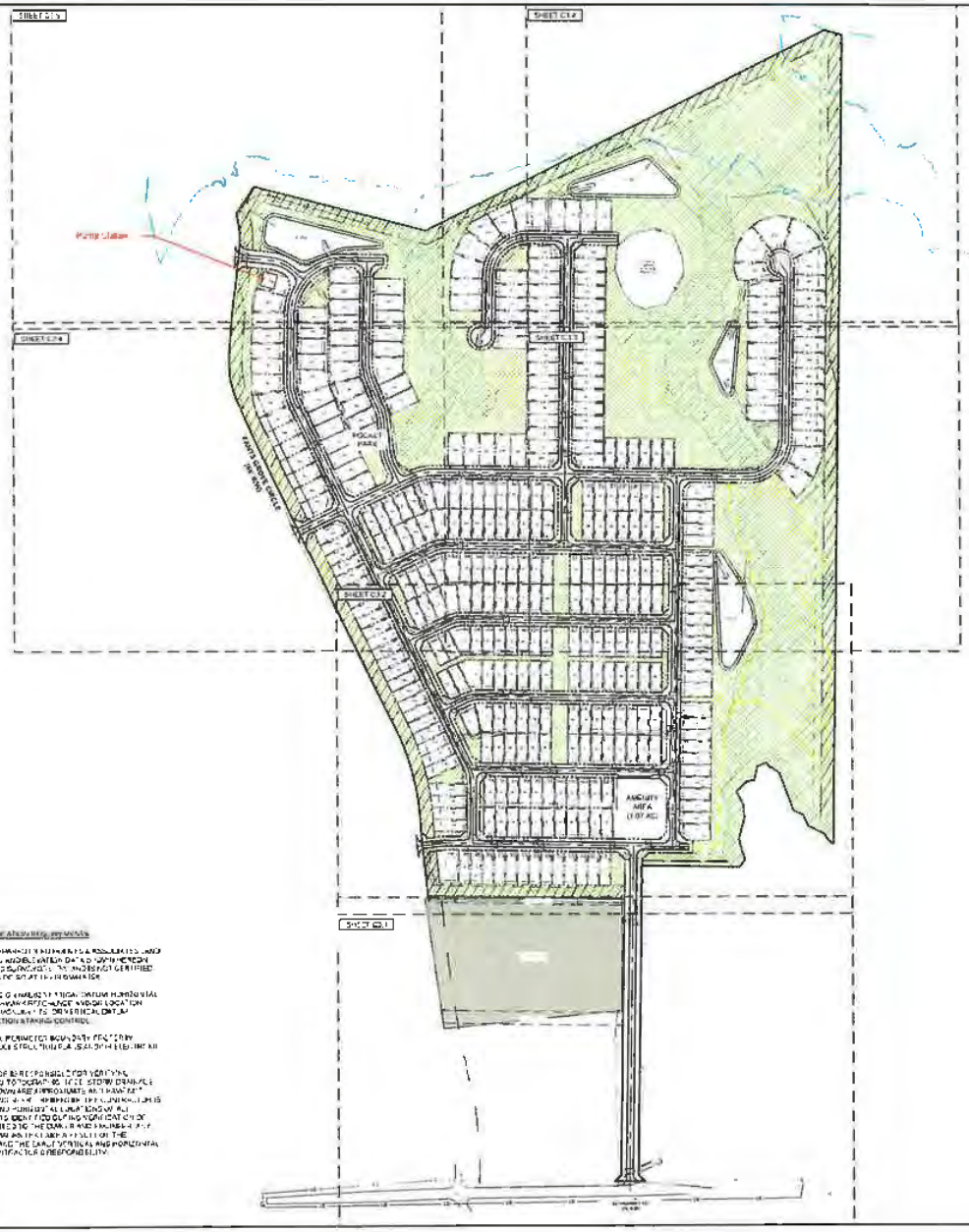
MASTER KEY



SEAMON WHITESIDE

MOUNT PLEASANT, SC
GREENVILLE, SC
SUMMERVILLE, SC
SPARTANBURG, SC
CHARLOTTE, NC

NOT FOR CONSTRUCTION

ANDERSON RESERVE
SPANO & ASSOCIATES, INC
ANDERSON COUNTY, SOUTH CAROLINA

DATE
DRAWN BY
REVISION HISTORY

OVERALL SITE PLAN

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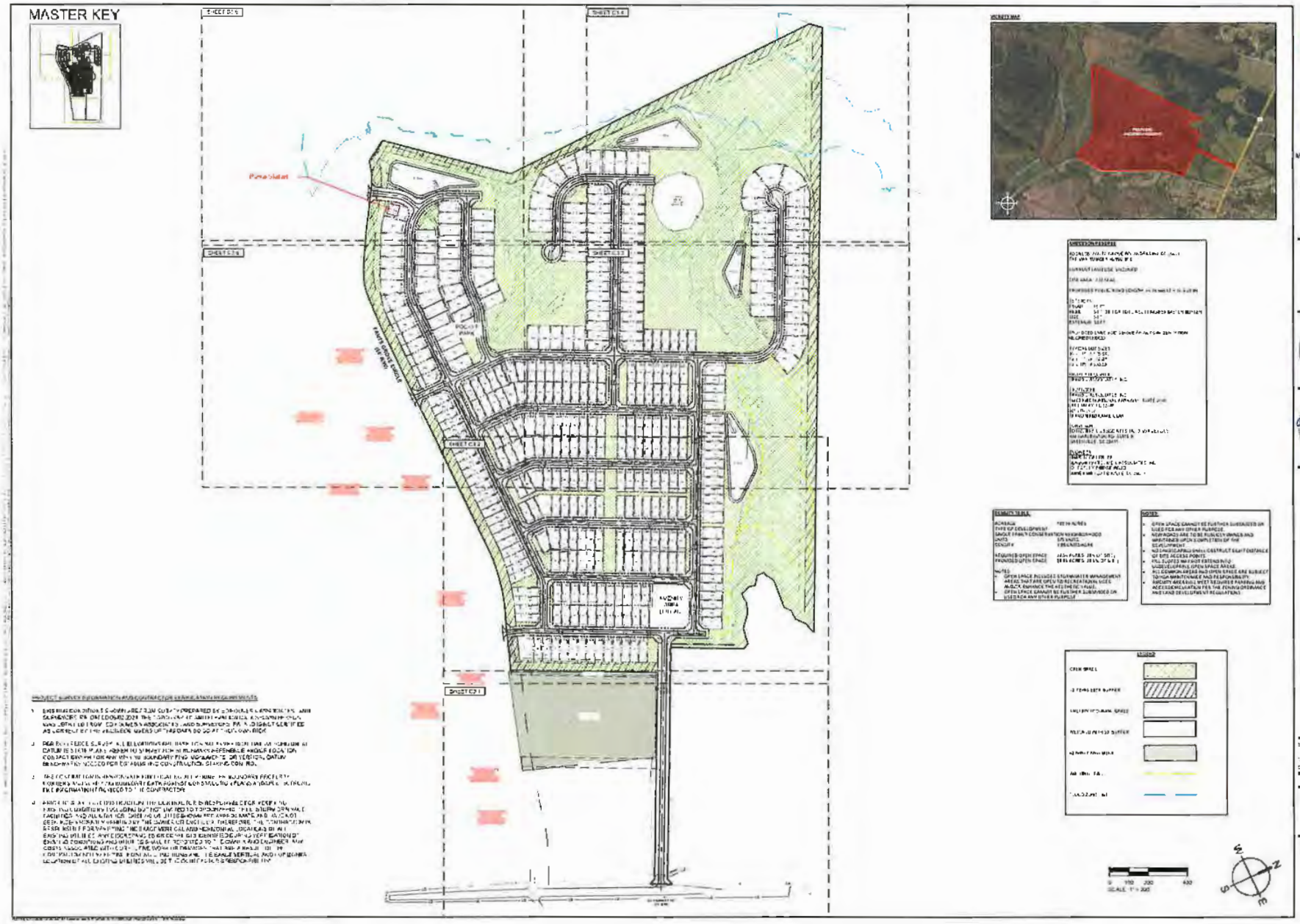

MASTER KEY
SHEET C1.4
SHEET C1.3
SHEET C1.2
SHEET C1.1
POCKET PARK
EMERGENCY VEHICLE ACCESS
VICINITY MAP
SEAMON WHITESIDE
MOUNT PLEASANT, SC
GREENVILLE, SC
SUMMERVILLE, SC
SPARTANBURG, SC
CHARLOTTE, NC
NOT FOR CONSTRUCTION
ANDERSON RESERVE
SPANO & ASSOCIATES, INC
ANDERSON COUNTY, SOUTH CAROLINA
REVISION HISTORY
OVERALL SITE PLAN
C3.0

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

ANDERSON COUNTY

PLANNING COMMISSION MEETING

JANUARY 14, 2025

PRESENT:
DAN HARVELL, CHAIRMAN
MICHAEL BURNS
BRAD BURDETTE
STEVEN GILREATH
WILL MOORE
DAVID COTHRAN
JANE JONES
WESLEY GRANT

ALSO PRESENT:
ALESIA HUNTER
TIM CARTEE
HENRY YOUMANS
JOAN HOLLIDAY
BRITTANY MCABEE
SARAH LYONS
TODD DARWIN

EXECUTIVE SESSION

DAN HARVELL: Let the record show that it's 7:33; we're called back into session. Before we proceed with any more business, I'd like to -- we'd like to welcome our new member, Mr. Michael Burns. He is the new assignee for the at large seat. Michael was appointed by County Council at their January 7 meeting. He resides in Anderson and lives off Deer Run Road. He is a PE, as well as a civil engineer. His qualifications, according to his application, were very, very extensive, and I know he's going to be a very welcomed and very thoughtful and very thorough member of the commission, and we officially tell you that we're glad that you're with us now. We're glad to have you on board.

MICHAEL BURNS: Thank you, Mr. Chairman.

DAN HARVELL: Okay. All right, we have gone into executive session.

The first, the first issue dealt with a legal matter, an appeal that was filed based on the, based on the finding -- or the decision of the Planning Commission previously. We do not have -- this is not a public hearing time, so there was not any sign up for this. This was just a decision that had to be made by the board based on what happened in the court proceedings following the appeal.

So at this time, based on our executive session, I will call for a motion to -- that may be in two parts to deal with what this appeal dealt with according to what the judge decided.

WILLIAM MOORE: At this time, Mr. Chairman, I need to go ahead and recuse myself. I recused myself of this matter back when it was initially voted on.

DAN HARVELL: Thank you, Mr. Moore, we'll allow you time to leave.

At this time, we have a motion that will be presented from the board.

STEVEN GILREATH: Mr. Chairman, I'd like to make a motion. 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.

DAN HARVELL: Thank you. We have a motion as stated by Mr. Gilreath. Do I hear a second?

WESLEY GRANT: Second.
DAN HARVELL: We have a second by Mr. Grant. Any discussion before the vote? All those in favor, please raise your hand. That would be Mr. Burns, Mr. Burdette, Mr. Gilreath, Harvell -- recused is Mr. Moore -- Mr. Cothran, Mr. Grant and Ms. Jones. Unanimous with one abstention.

Following that, we have one more motion to come forth regarding the initial vote on this. We have a motion from the board at this time?

DAVID COTHRAN: Mr. Chairman?
DAN HARVELL: We have a motion from Mr. Cothran.
DAVID COTHRAN: I make a motion that we reaffirm the decision made by the Anderson County Planning Commission, made on April 19, 2024 which was seven to one in favor of approval.
DAN HARVELL: Thank you. Do I hear a second on that motion?
STEVEN GILREATH: Second.
DAN HARVELL: We have a second by Mr. Gilreath. Any discussion amongst the commissioners? Hearing none, those in favor of the motion, please raise your hand. And that will be Mr. Burns, Mr. Burdette, Mr. Gilreath, Harvell -- recused is Mr. Moore Mr. Cothran, Mr. Grant and Ms. Jones. So unanimous with one abstention.

All right, so going into 10(B), I believe it is. Staff.

HENRY YOUMANS: Mr. Chair?
DAN HARVELL: Mr. Youmans.
HENRY YOUMANS: Ninety-one property owners within 2000 feet of the proposed development were notified via postcard. Subdivision's name is -- preliminary subdivision's name is Lawton Estates. This intended development is single family. The applicant is Stanley Martin Homes. The engineer is Blue Water Civil Design. The local access is Dalrymple Road and Thompson Road. It's in County Council District 4. Land use is residential. Current zoning is R-20.

There are three parcels involved and those tax map numbers are there for your reference. So total circumference of 93.23 acres. Number of lots is 120. There's no variance at this time. And the traffic impact analysis, the study addressed the Dalrymple Road site access. Dalrymple Road and Thompson Road, Dalrymple Road and Scotts Bridge Road Shackleburg and Thomas (verbatim) Road. No turn lanes were warranted at the site accesses and the level of service, the LOS,

December 23, 2024

Spano and Associates, Inc.
1540 International Parkway, Suite 2000
Lake Mary, Florida 32746

Attention: Mr. Ralph Spano

Reference: **Additional Investigations**
Anderson Reserve
Anderson County, South Carolina
Project No. 24600430

Mr. Spano,

S&ME, Inc. (S&ME) has completed additional investigations for the Anderson Reserve project area in Anderson County, South Carolina (Figures 1 and 2). The work completed was to confirm the presence of a cemetery within the project area and complete slot trenches at two locations within the project area.

Previously Completed Work

S&ME has completed a background literature review and records search, a site visit, and a geophysical survey at the Anderson Reserve project area intermittently from June through August 2024 (Attachment A). An area was identified as potentially containing unmarked graves and avoidance of the area was recommended. In October 2024, New South Associates and Preservation South visited the Anderson Reserve project area to identify the location of the cemetery and possible unmarked graves and examined areas outside those that S&ME examined (Attachments B and C). Two areas were identified (Area 1 and Area 2) during the October surveys; Area 1 had some fieldstones oriented east/west and was noted as having a low to moderate probability for containing unmarked graves and Area 2 was located in the far northeastern portion of the project area on a hilltop. Area 2 contained fieldstone markers oriented east/west and ground penetrating radar (GPR) was completed in the area; anomalies consistent with burials were present. Area 2 was given high probability for containing graves and is likely the enslaved cemetery associated with Rivoli Plantation.

Site Visit and Slot Trenching

On December 12, 18, and 19, 2024, S&ME archaeologists conducted a site visit to confirm Area 2 was likely the enslaved cemetery and to complete slot trenching within Area 1 and the area identified by S&ME to determine if grave shaft stains were present within either location. The cemetery within Area 2 measures approximately 68-m (220-ft) east/west by 58-m (158-ft) north/south and covers the hilltop area of the landform (Figures 1 and 2). White flags were present at both locations, some remained in place, others had been pulled out of the ground or the flag had been ripped off the post, likely by Hurricane Helene that had come through the area after the October 2024 site visits (Figures 3 and 4).

Area 1 Slot Trenches

Four slot trenches were excavated within Area 1 near a selection of the fieldstones that still contained the flagging that had been placed in October. The slot trenches were excavated near the flags marked F1, F6, and F13 as these markers would present a good sample of Area 1 (Figure 5). As stated in the New South Associates report, the area has an abundance of fieldstone; in clearing the leaves and sticks from the areas tested, additional fieldstones were encountered in and around the areas examined.

Slot Trench at F1

The flag marked 1 is located near the southern end of Area 1, southwest of the flag marking F2 and north of the weathered stone (Figure 5). This area consisted of a single fieldstone on the west side and three fieldstones on the east (Figures 6 and 7). The slot trench measured 18 inches east/west by 36 inches north/south, was placed between the markers, across the possible grave, and was terminated at a depth of 15 inches. The soil profile consisted of six inches of reddish brown (2.5YR 4/4) sandy loam followed by nine inches (6–15+ inches) of red (2.5YR 4/8) sandy clay and no grave shaft staining was identified within the excavated trench (Figures 8 and 9). The trench was refilled following the visual examination, recording of depths, soil composition, and photographs were taken (Figure 10).

Slot Trench at F6

The flag marked 6 is located near the center of Area 1 (Figure 5). This area consisted of two fieldstones, one to the east and one to the west (Figure 11). The slot trench measured 18 inches east/west by 36 inches north/south and was terminated at a depth of 15 inches. The soil profile consisted of five inches of reddish brown (2.5YR 4/4) sandy loam, followed by eight inches (5–13 inches) of red (2.5YR 4/8) sandy clay, terminating with two inches (13–15+ inches) dark red (10R 3/6) sandy clay. Degrading rock was present at the base of slot trench and no grave shaft staining was identified within the slot trench (Figures 12 and 13). The trench was refilled following the visual examination, recording of depths, soil composition, and photographs were taken (Figure 14).

Slot Trenches at F13

The flag marked 13 is located in the north central portion of Area 1 (Figure 5). This area consisted of the flagged fieldstone in the center with one fieldstone to the east and another fieldstone to the west, either of which could have represented an unmarked grave due to their orientation. Two slot trenches were excavated at this location, one to each side of the fieldstone marked 13 (Figures 15).

The first slot trench measured 18 inches east/west by 42 inches north/south and was terminated at a depth of 18 inches. The soil profile consisted of four inches of reddish brown (2.5YR 4/4) sandy loam followed by 14 inches (4–18+ inches) of red (2.5YR 4/8) sandy clay. No grave shaft staining was identified within the excavated trench (Figure 16). The trench was refilled following the visual examination, recording of depths, soil composition, and photographs were taken.

The second slot trench excavated in this area measured 18 inches east/west by 42 inches north/south and was terminated at a depth of 14 inches. The soil profile consisted of five inches of reddish brown (2.5YR 4/4) sandy loam followed by nine inches (5–14+ inches) of red (2.5YR 4/8) sandy clay. Degrading rock was present at the base of this slot trench and no grave shaft staining was identified (Figure 17). The trench was refilled following the visual examination, recording of depths, soil composition, and photographs were taken (Figure 18).

Initial Avoidance Area

Three slot trenches were excavated within the area that S&ME initially recommended for avoidance to determine if grave shafts were present within the area (Figure 19). The areas that were selected either had fieldstone markers oriented east/west or contained softer soil than the surrounding areas.

First Slot Trench

The first slot trench was placed in the southwest portion of the area and had two fieldstone oriented east/west (Figures 19 and 20). The slot trench measured 18 inches east/west by 36 inches north/south and was terminated at a depth of 15 inches. The soil profile consisted of five inches of reddish brown (2.5YR 4/4) sandy loam followed by seven inches (5–12 inches) of red (2.5YR 4/8) sandy clay followed by three inches (12–15+ inches) of dark red (10R 3/6) sandy clay. No grave shaft staining was identified within the excavated trench (Figure 21). The trench was refilled following the visual examination, recording of depths, soil composition, and photographs were taken (Figure 22).

Second Excavated Trench

The second trench was placed in the northwest portion of the area and had softer soil suggesting a possible grave (Figure 19). The slot trench measured 18 inches east/west by 36 inches north/south and was terminated at a depth of 15 inches. The soil profile consisted of six inches of reddish brown (2.5YR 4/4) sandy loam followed by seven inches (6–13 inches) of red (2.5YR 4/8) sandy clay followed by two inches (13–15+ inches) of dark red (10R 3/6) sandy clay. Degrading rock was present at the base of the slot trench and no grave shaft staining was identified within the excavated trench (Figures 23 and 24). The trench was refilled following the visual examination, recording of depths, soil composition, and photographs were taken (Figure 25).

Third Excavated Trench

The third trench was placed in the east central portion of the survey area and had softer soil suggesting a possible grave (Figure 19). The slot trench measured 18 inches east/west by 36 inches north/south and was terminated at a depth of 15 inches. The soil profile for the excavated trench consisted of six inches of reddish brown (2.5YR 4/4) sandy loam followed by six inches (6–12 inches) of red (2.5YR 4/8) sandy clay followed by three inches (12–15+ inches) of dark red (10R 3/6) sandy clay. Degrading rock and a large root were present at the base of the slot trench and no grave shaft staining was identified within the excavated trench (Figures 26 and 27). The trench was refilled following the visual examination, recording of depths, soil composition, and photographs were taken (Figure 28).

Summary and Recommendations

Based on the results of the site visit and slot trench excavation, Area 1 and the initial area recommended for avoidance by S&ME, have a low probability for containing graves given the lack of grave shaft staining and no additional archaeological work or avoidance in those areas is recommended.

Area 2 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.

Closing

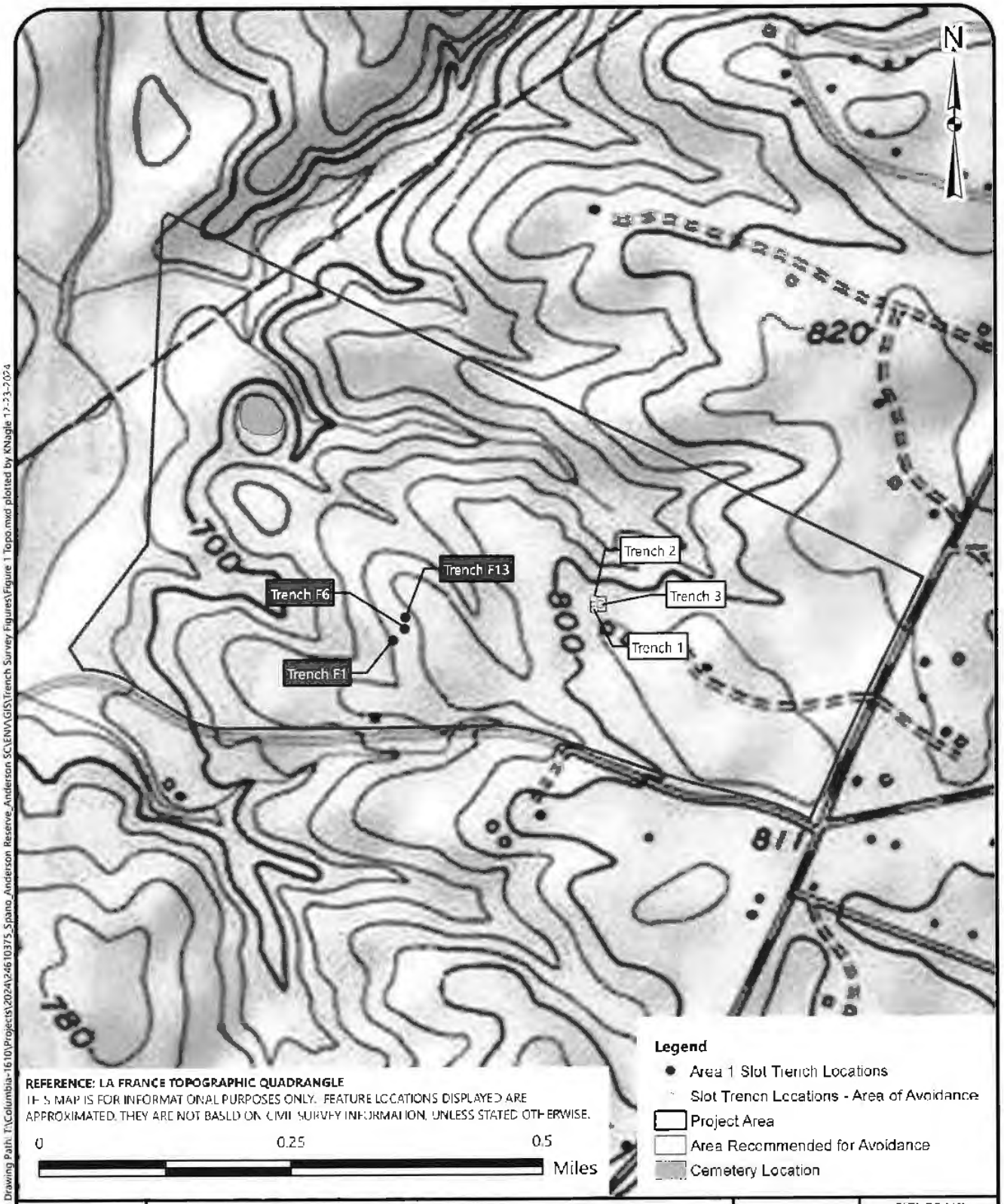
If you have questions or need additional information, please let us know by contacting Kimberly Nagle at knagle@smeinc.com or 803-561-9024.

Sincerely,

S&ME, Inc.

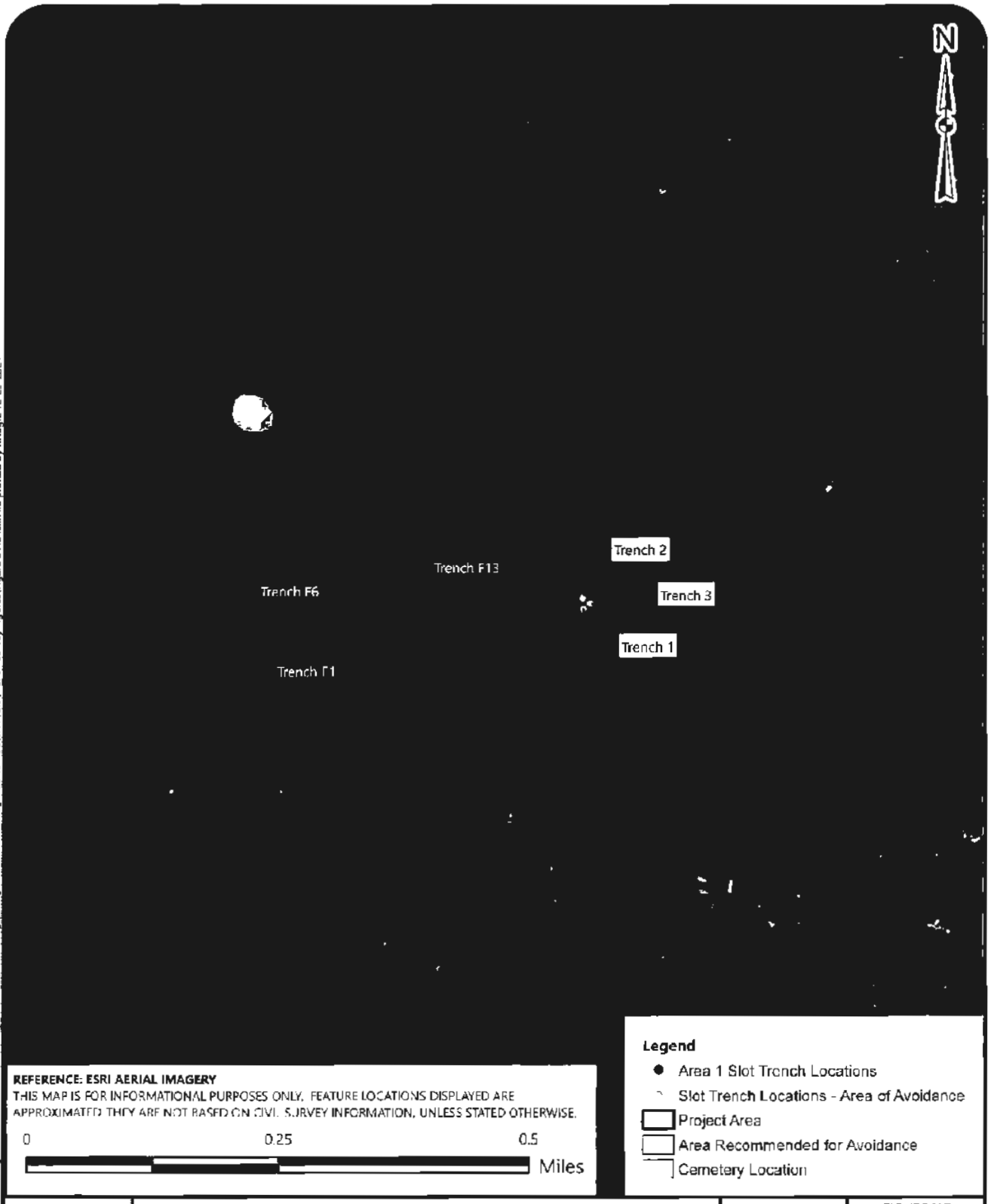
Kimberly Nagle, MS, RPA
Principal Archaeologist

Paul Connell, MA
Field Director



Drawing Path: T:\Columbia-1610\Projects\2024\24610375_Spano_Anderson Reserve_Anderson SC\ENV\GIS\Trench Survey Figures\Figure 1 Topo.mxd plotted by KNagle 12-23-2024

	Topographic Map		FIGURE NO.
	ANDERSON RESERVE ANDERSON COUNTY, SOUTH CAROLINA	DATE: 12-23-24 PROJECT NUMBER 24610375	1



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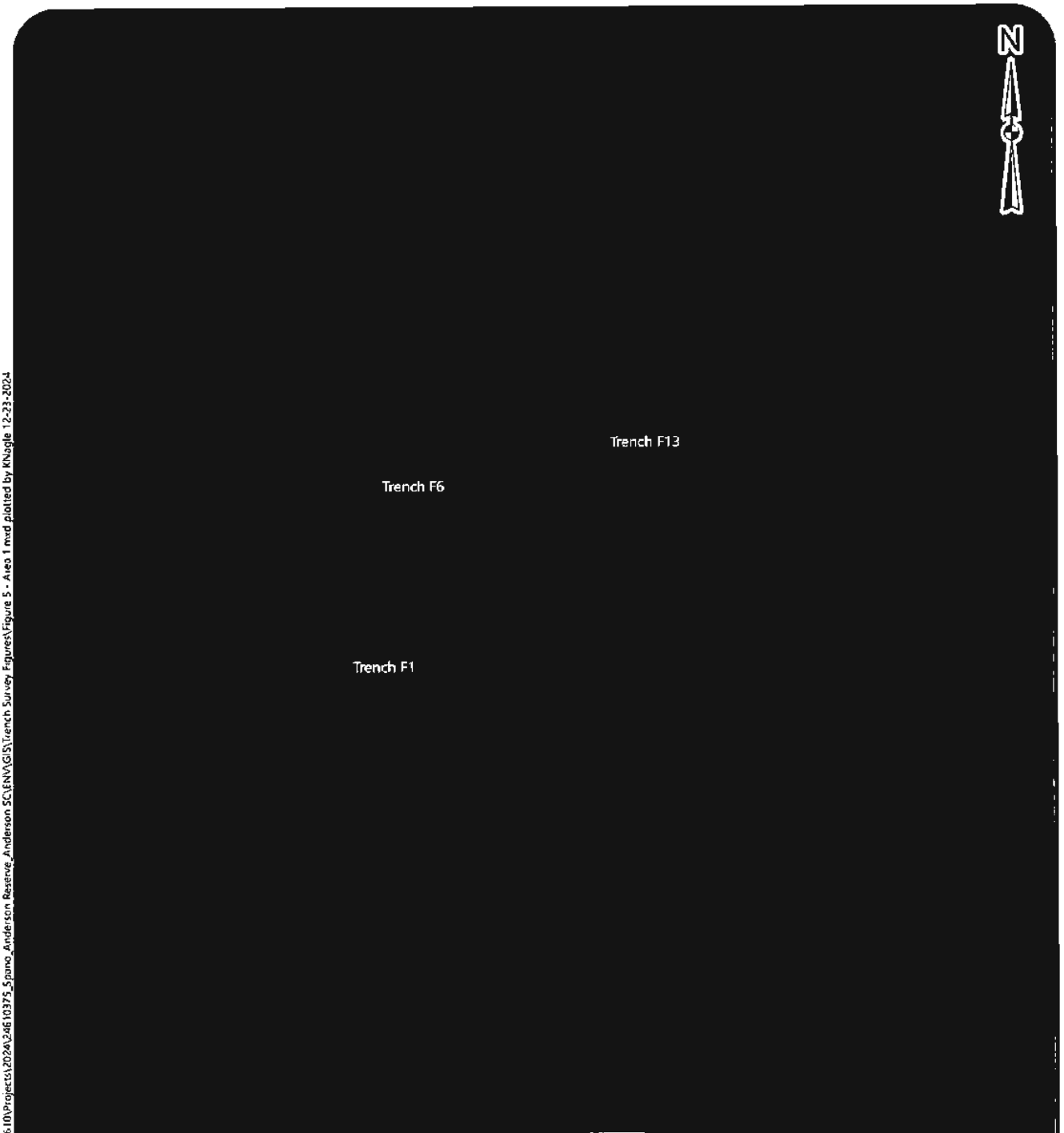
	Aerial Map		FIGURE NO.
	ANDERSON RESERVE ANDERSON COUNTY, SOUTH CAROLINA	DATE: 12-23-24 PROJECT NUMBER 24610375	2

Figure 3. Marked fieldstones within Area 1, facing northeast.

Figure 4. Marked fieldstone in Area 2, facing north.



Drawing Path: T:\Columbia-16-10\Projects\2024\24610375_Spano_Anderson Reserve_Anderson SC\ENV\GIS\Trench Survey Figures\Figure 5 - Area 1.mxd plotted by KNagle 12-23-2024

REFERENCE: ESRI AERIAL IMAGERY
THIS MAP IS FOR INFORMATIONAL PURPOSES ONLY. FEATURE LOCATIONS DISPLAYED ARE APPROXIMATED. THEY ARE NOT BASED ON CIVIL SURVEY INFORMATION, UNLESS STATED OTHERWISE

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Feet

Legend
- Area 1 Slot Trench Locations
- Project Area

	Slot Trench Locations in Area 1		FIGURE NO.
	ANDERSON RESERVE ANDERSON COUNTY, SOUTH CAROLINA	DATE: 12-23-24 PROJECT NUMBER 24610375	5

Figure 6. Overview of area around F1 and excavation area, circles show fieldstones.

Figure 7. Three fieldstone in close proximity in F1 area.

Figure 8. Excavated slot trench at F1.

Figure 9. Excavated slot trench at F1.

Figure 10. Refilled trench at F1 in Area 1.

Figure 11. Overview of area around F6.

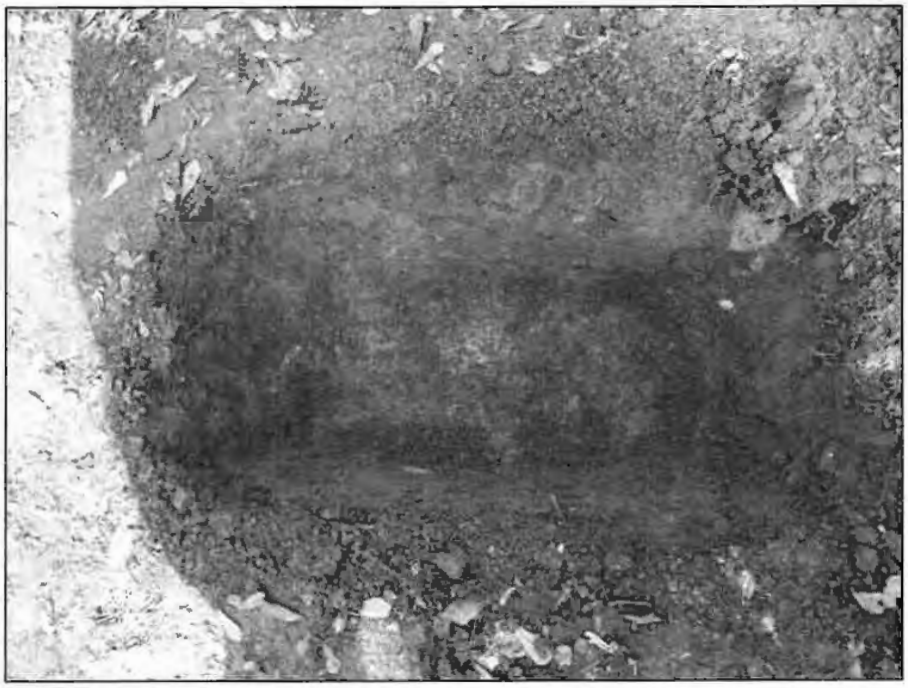


Figure 12. Excavated slot trench near F6.

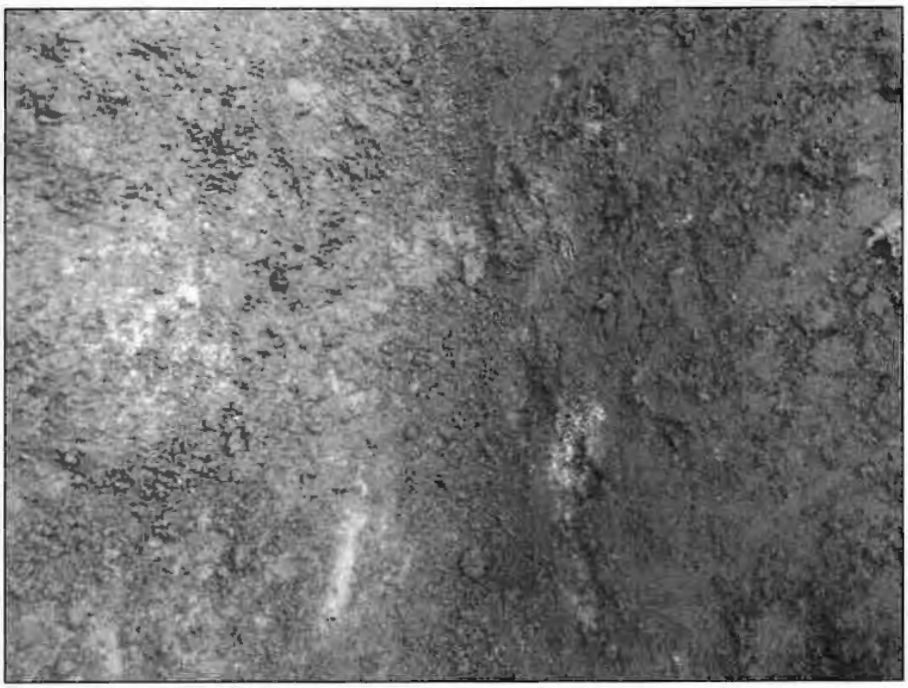


Figure 13. Degrading rock at base of slot trench near F6.

Figure 14. Refilled trench near F6 in Area 1.

Figure 15. Overview of area around F13.

Figure 16. Excavated slot trench near F13.

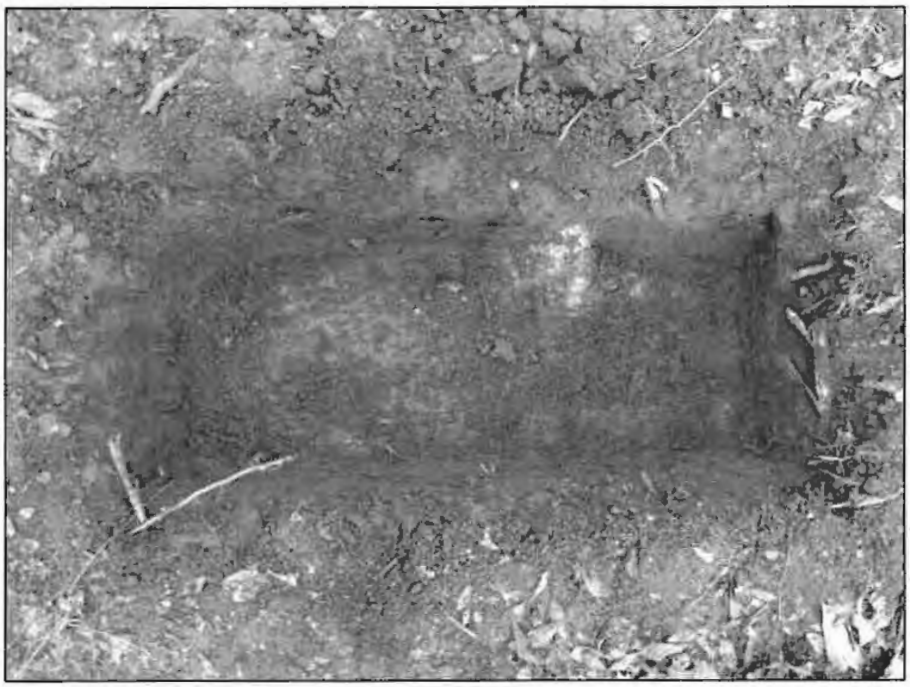
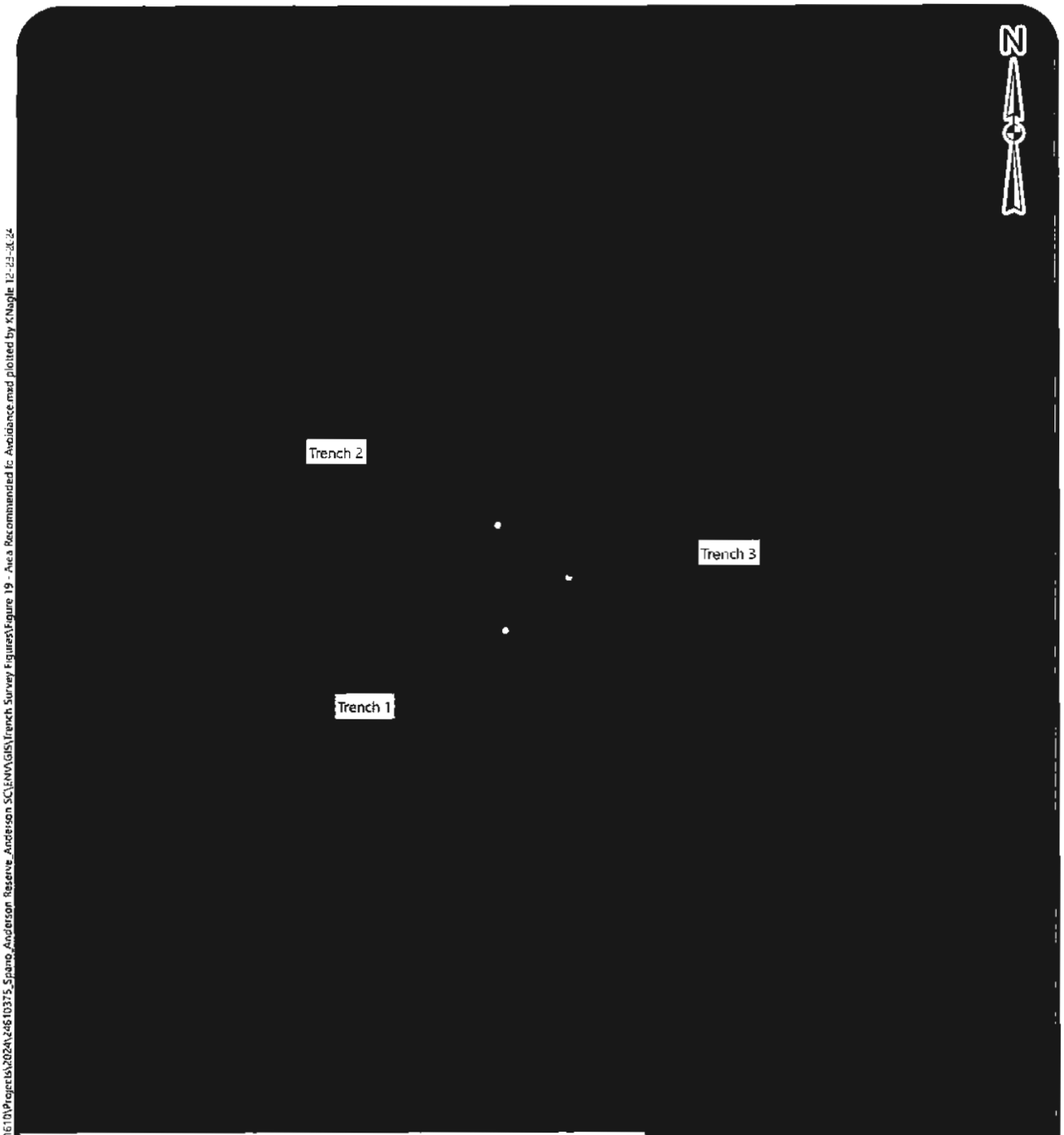


Figure 17. Excavated slot trench near F13.

Figure 18. Refilled slot trenches near F13.



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Legend
- Slot Trench Locations - Area of Avoidance
- Area Recommended for Avoidance

Drawing Path: T:\Columbia-1610\Projects\2024\24610375_Spano_Anderson Reserve_Anderson SC\ENV\GIS\Trench Survey Figures\Figure 19 - Area Recommended for Avoidance.mxd plotted by KNagle 12-23-2024

	Slot Trnech Location in Area Recommended for Avoidance		FIGURE NO.
	ANDERSON RESERVE ANDERSON COUNTY, SOUTH CAROLINA	DATE: 12-23-24 PROJECT NUMBER: 24610375	19

Figure 20. Overview of the area associated with the first trench in initial area recommended for avoidance, circles show fieldstones.

Figure 21. First slot trench in initial area recommended for avoidance.

Figure 22. View of the first trench refilled in initial area recommended for avoidance.

Figure 23. Second slot trench in initial area recommended for avoidance with degrading rock at base.

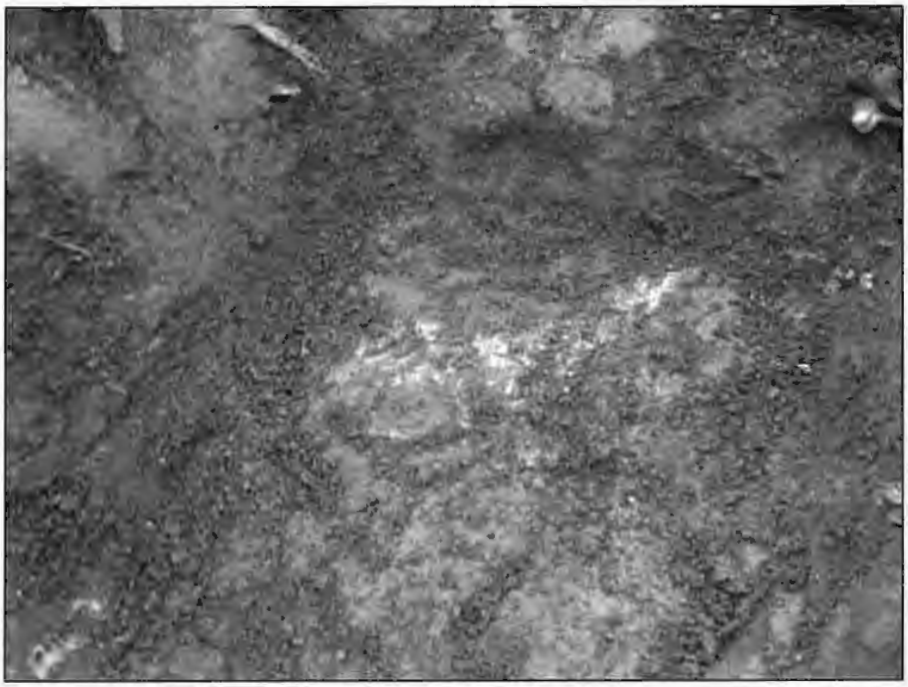


Figure 24. Second slot trench in initial area recommended for avoidance showing degrading rock.

Figure 25. View of the second trench refilled in initial area recommended for avoidance.

Figure 26. Third slot trench in initial area recommended for avoidance.

Figure 27. Third slot trench in initial area recommended for avoidance showing large root and degrading rock within trench.

Figure 28. View of the third trench refilled in initial area recommended for avoidance.

Attachment 1 – S&ME 2024 letter report

December 7, 2024

Spano and Associates, Inc.
1540 International Parkway, Suite 2000
Lake Mary, Florida 32746

Attention: Mr. Ralph Spano

Reference: **Cultural Resources Literature Review, Site Visit, Geophysical Survey**
Anderson Reserve
Anderson County, South Carolina
Project No. 24600430

Mr. Spano,

S&ME, Inc. (S&ME) has completed a site visit and geophysical survey for the Anderson Reserve project area in Anderson County, South Carolina (Figures 1 and 2). During the due diligence process, an affidavit signed by Mr. Kenneth Rhodes provided information stating that graves of enslaved individuals were buried on the property and provided information to the best of his recollection on where these individuals were interred. A literature review, site visit, and geophysical survey was completed on portions of the project area. The purpose of the literature review was to review historic documents and mapping to determine the likely areas where the graves were present; the purpose of the site visit was to investigate the areas deemed likely for containing the graves based on the results of the literature review and narrow down the areas for the geophysical survey; and the geophysical survey was conducted to determine if anomalies were present that could represent unmarked graves.

During the investigations, there was no evidence of graves, enslaved or otherwise, in the areas examined. Based on the archival information reviewed and the information presented below, S&ME is recommending a portion of the project area, where the graves of the enslaved were thought to be, to be avoided/preserved.

Literature Review

Intermittently from June 4 through 9, 2024, a background literature review and records search was conducted utilizing sources from the Clemson University Archives, historic maps, reading through documents and books online that pertained to Rivoli Plantation, and reviewing the online GIS database at the South Carolina Institute of Archaeology and Anthropology (SCIAA) in Columbia. Two of the historic maps show the location of Rivoli Plantation, but do not show a cemetery within the project area. The 1877 map of Anderson County shows Rivoli is owned by J.B. Adger Jr. and the 1897 map of Anderson County shows Rivoli Plantation is owned by O.A. Bowen (husband of Clarissa W. Adger Bowen; daughter of Robert Adger) and an Old Slave Cemetery is located north of the project area (Figures 3 and 4).

The information that came from the Clemson University archives includes poems about Rivoli Plantation that were written by Mr. Robert Adger Bowen (1868–1972) son of O.A and Clarissa Adger Bowen. One of the poems in the collection is called 'Graveyard Hill' which describes the hill where the graves were placed (Figure 5) and a hand

drawn map that is not to scale showing what the layout of Rivoli Plantation was, including the barn, overseer house, main house, kitchen, and garden (Figure 6).

The affidavit from Mr. Rhodes states that:

- Some (graves) were located on the hill and behind the barn.
- There were some graves near where a spring started and on a short branch not too far from the roads.

Historic aerial imagery from 1947 (Figure 7) shows the plantation house with three outbuildings behind the house, the largest appears to be a barn and the other two are likely the overseer house and one of the other structures depicted on the hand drawn map from Robert Adger Bowen. The topographic map shows the spring head to the north not too far from structures (Figure 1).

Based on the information gathered during the literature review, it was thought that the graves of the enslaved individuals are within the area shown in Figure 8, which was the focus of the site visit.

Site Visit

The site visit was completed in June and August 2024, the foundation of the main house remains and two outbuildings adjacent to the house are standing, but in disrepair; there is building material and concentrations of artifacts and sheet metal behind the house, which likely represents the three buildings that were standing in the 1960s (Figures 9 and 10); the footers of the barn and a small enclosure that was attached to the barn were identified during the August 2024 site visit (Figure 11 and 12). During the site visit, there were two areas, fairly close to each other that stood out as containing possible graves due to the following reasons:

Soil in these areas is deeper than the rest of the areas examined, suggesting the soil has been disturbed, possibly through burials of individuals.
The volume and placement of fieldstones within these areas is not natural given very limited amounts of fieldstone were identified when walking through the project area. It is common for enslaved individuals or individuals with little wealth to use fieldstone markers instead of more traditional markers.
One of the areas is situated behind the barn footers.
The other area appears to be close to a spring head and not far from the road that once traveled through the project area.

Due to the close proximity of the two areas, they are depicted as one area in Figure 13.

Geophysical Survey

In August 2024, a geophysical survey was completed in the two areas of interest in Figure 13. The geophysical survey used electromagnetic profiling (EM) and ground penetrating radar (GPR) geophysical methods in an area behind the footers that belonged to the barn and in a second smaller area that appeared to be near a spring head that had fieldstones and other man made features (Figures 14 through 18). During the geophysical survey, no evidence of unmarked graves was identified. The full geophysical report is attached to this letter.

Summary and Recommendations

Although no graves were identified during the survey, that does not mean that the individuals were not out there at one point. Given the burials are anywhere from 150 to 200 years old, placed in highly acidic soil in an area of terracing and erosion, it is unlikely that there would be human remains left to identify.

Based on the results of the literature review and site visit, although no evidence of graves was identified during the investigations, it is the opinion of S&ME 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 ground disturbing and construction activities.

Cemeteries are protected by state law (SC Code of Laws 27-43-10 through 27-43-40) and the code of laws should be followed cemeteries and inadvertent discoveries.

Closing

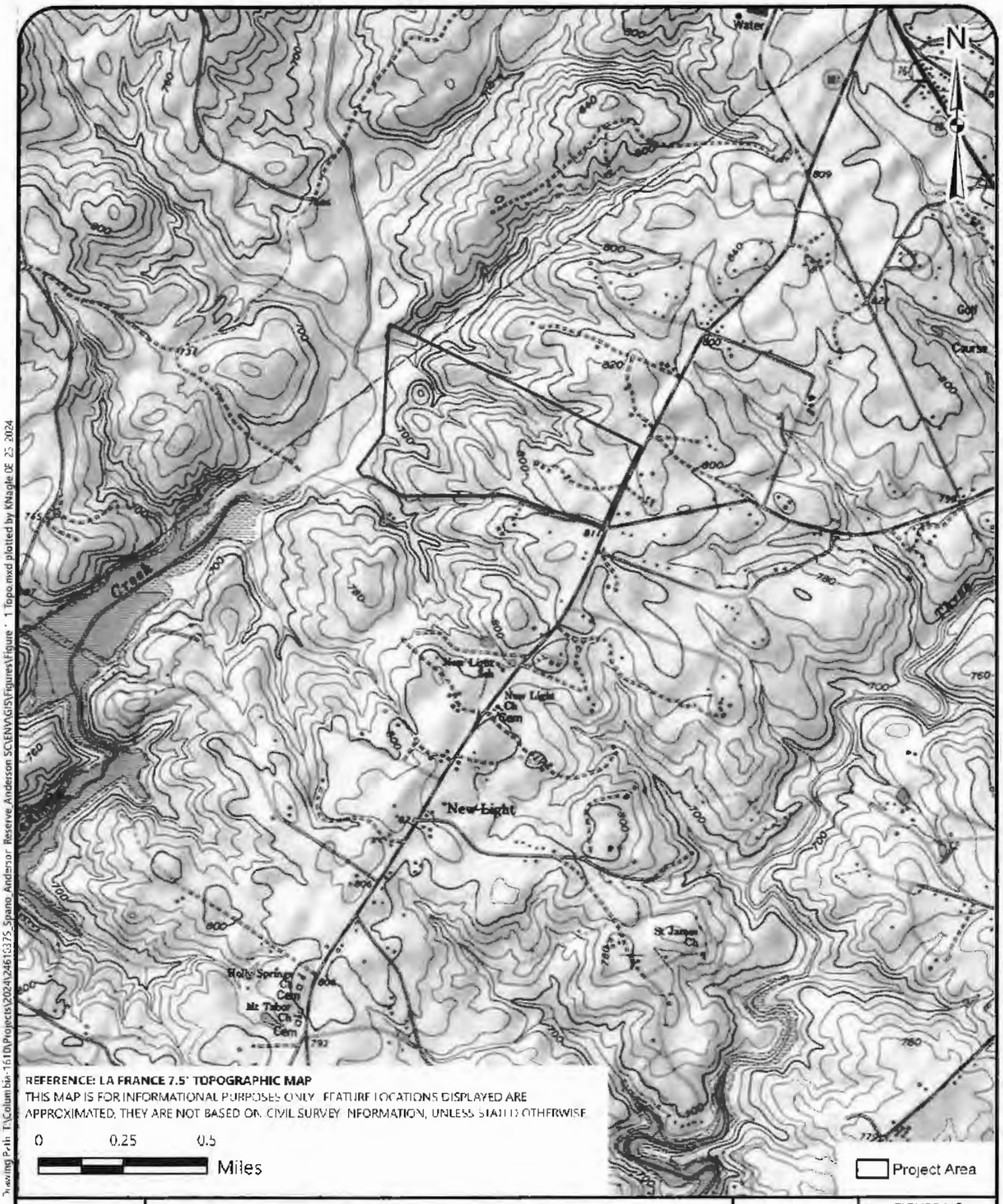
If you have questions or need additional information, please let us know by contacting Kimberly Nagle at knagle@smeinc.com or 803-561-9024.

Sincerely,

S&ME, Inc.

Kimberly Nagle, MS, RPA
Principal Archaeologist

Paul Connell, MA
Field Director



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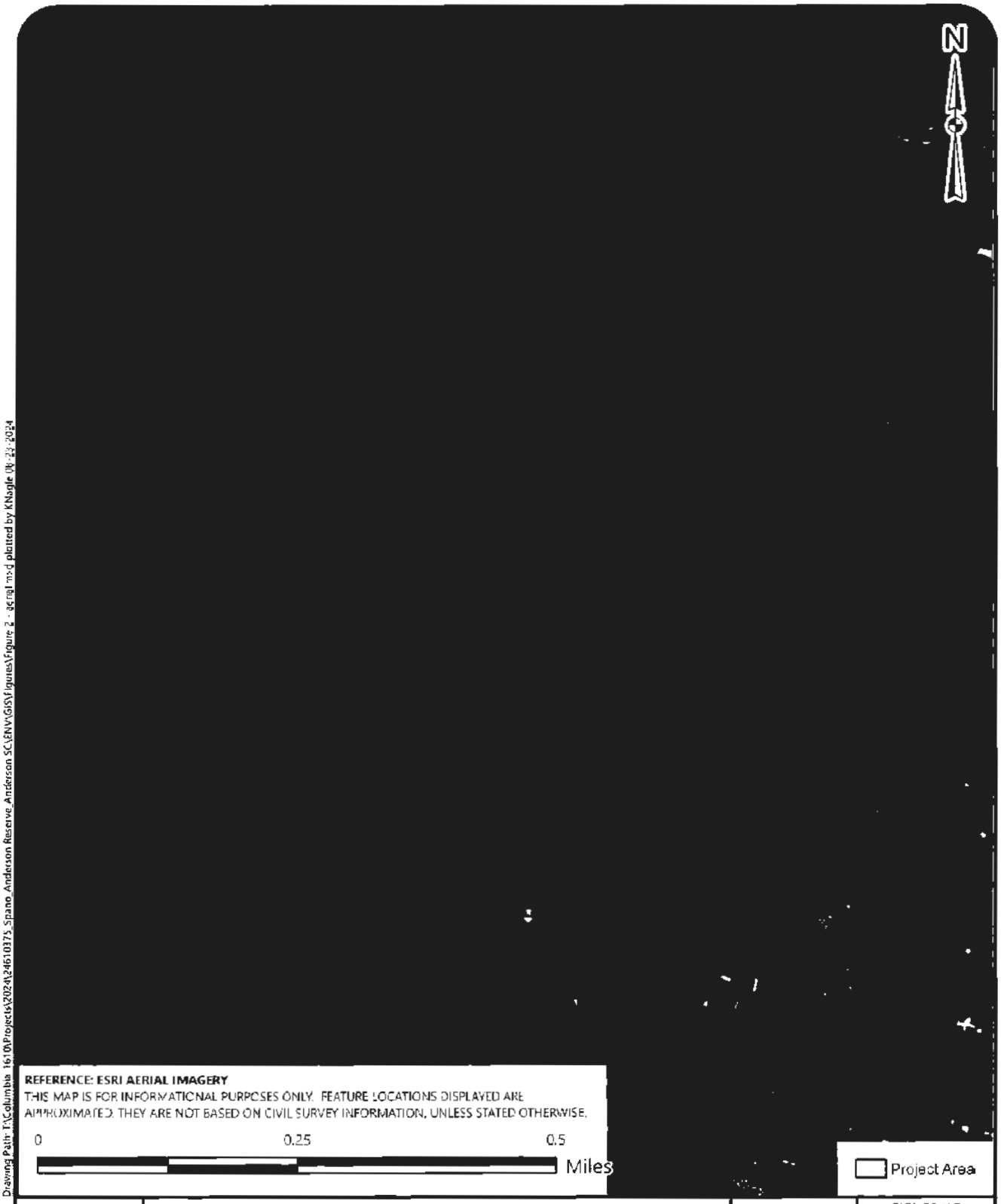
	Topographic Map		FIGURE NO.
	ANDERSON RESERVE ANDERSON COUNTY, SOUTH CAROLINA	DATE: 8-23-24 PROJECT NUMBER 24600430	1



Drawing Path: T:\Columbia 1610\Projects\2024\24610375_Spano_Anderson Reserve_Anderson SC\ENV\GIS\Figures\figure 2 - aerial.mxd plotted by KNagle (8-23-2024

	Aerial Map		FIGURE NO.
	ANDERSON RESERVE ANDERSON COUNTY, SOUTH CAROLINA	DATE: 8-23-24 PROJECT NUMBER 24600430	2

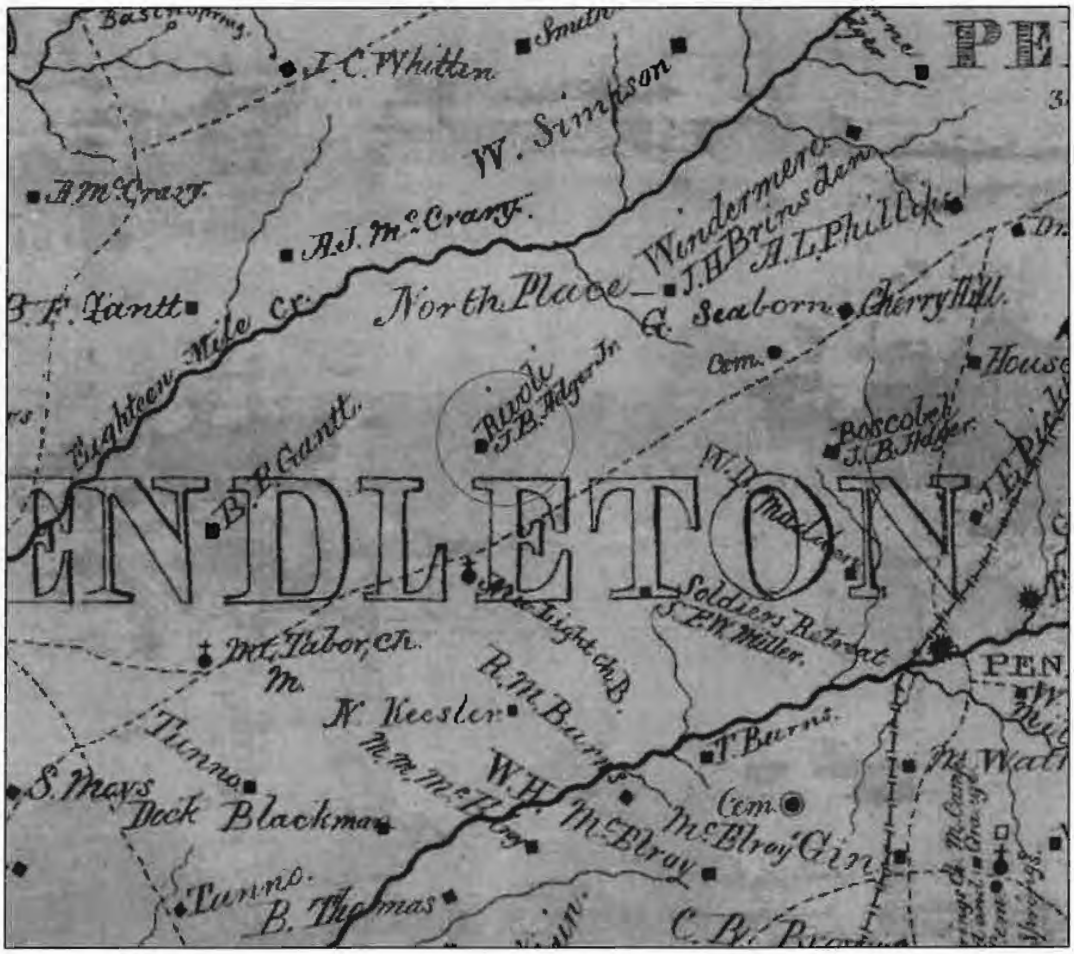


Figure 3. Portion of 1877 map of Anderson County showing Rivoli Plantation.

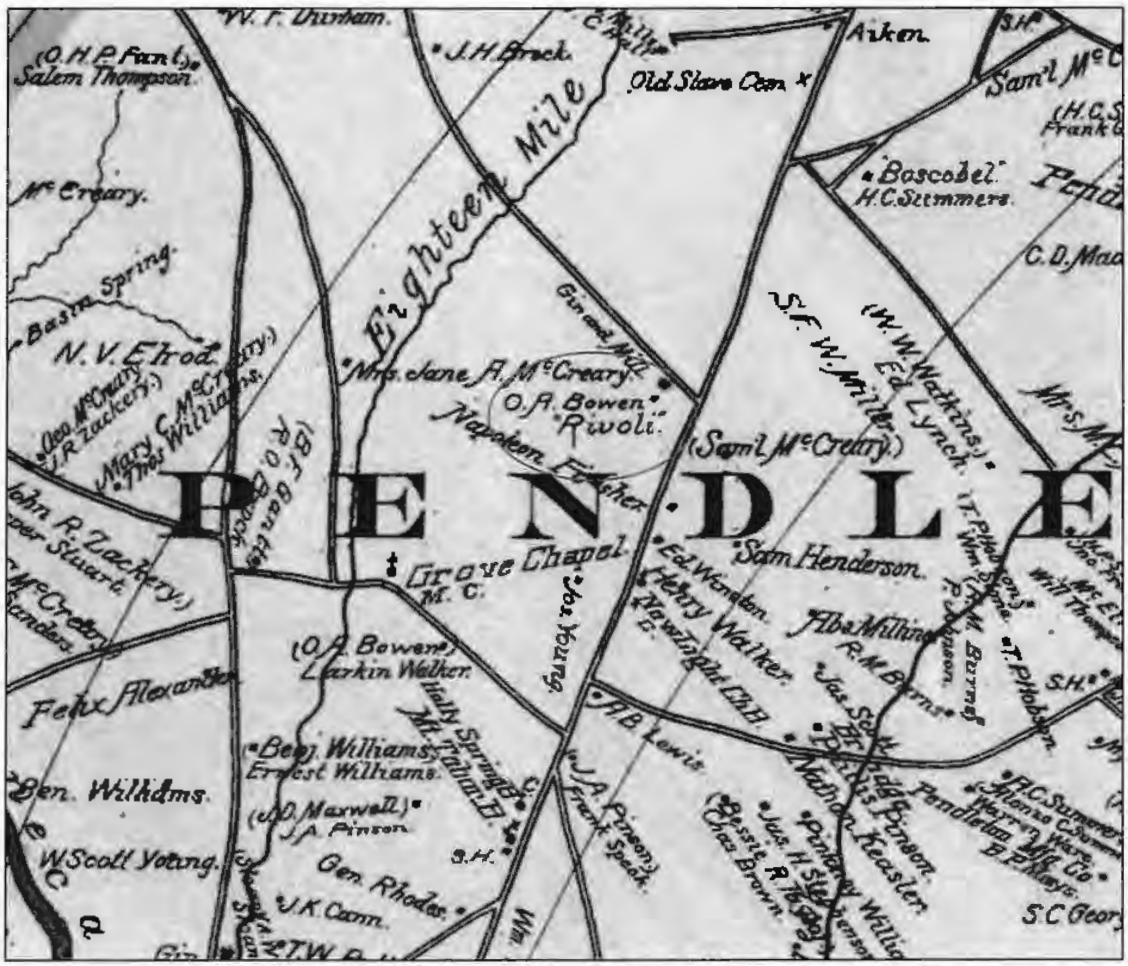
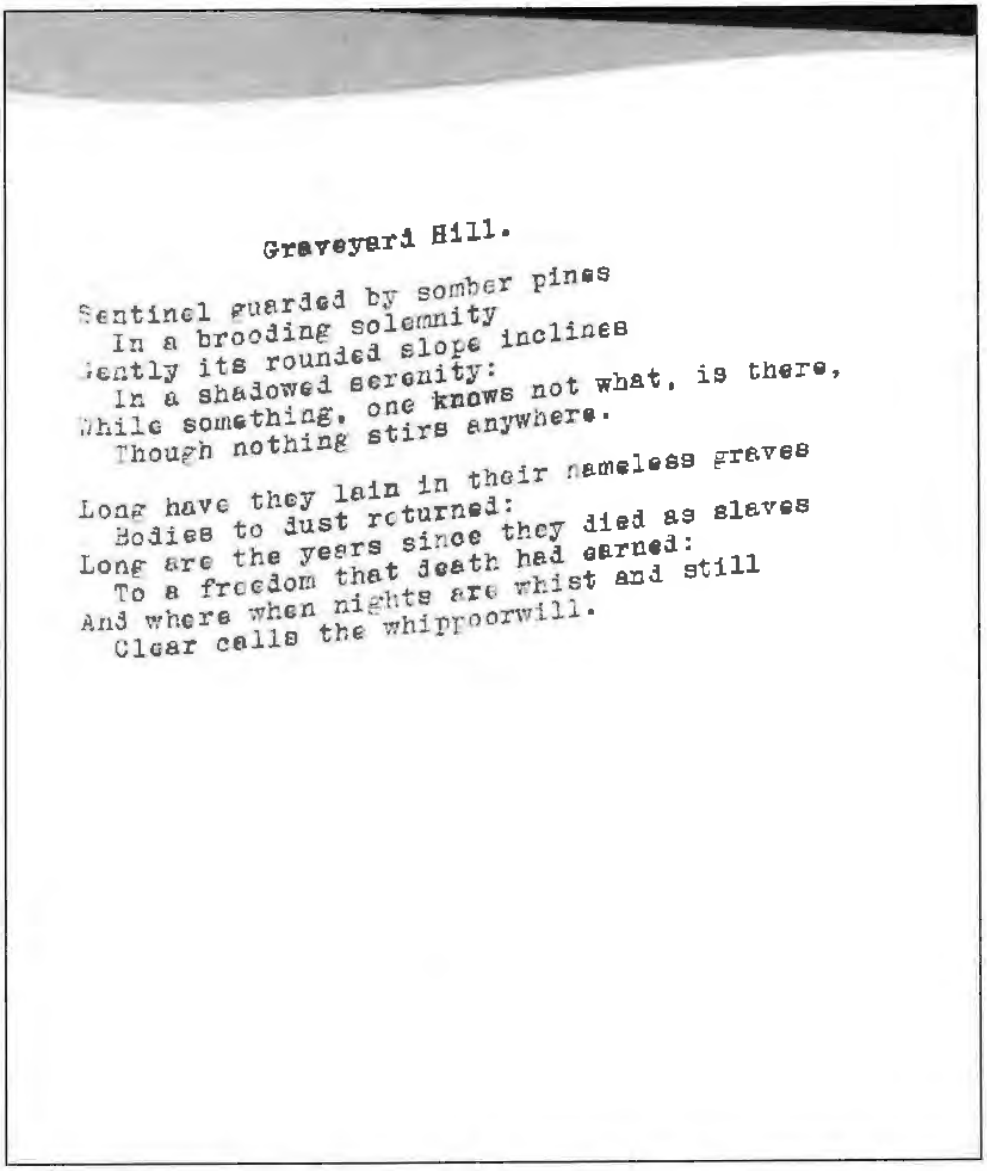


Figure 4. Portion of 1897 Anderson County map showing location of Rivoli Plantation.



Graveyard Hill.

Sentinel guarded by somber pines
  In a brooding solemnity
Gently its rounded slope inclines
  In a shadowed serenity:
While something, one knows not what, is there,
  Though nothing stirs anywhere.

Long have they lain in their nameless graves
  Bodies to dust returned:
Long are the years since they died as slaves
  To a freedom that death had earned:
And where when nights are whist and still
  Clear calls the whippoorwill.

Figure 5. Graveyard Hill poem.

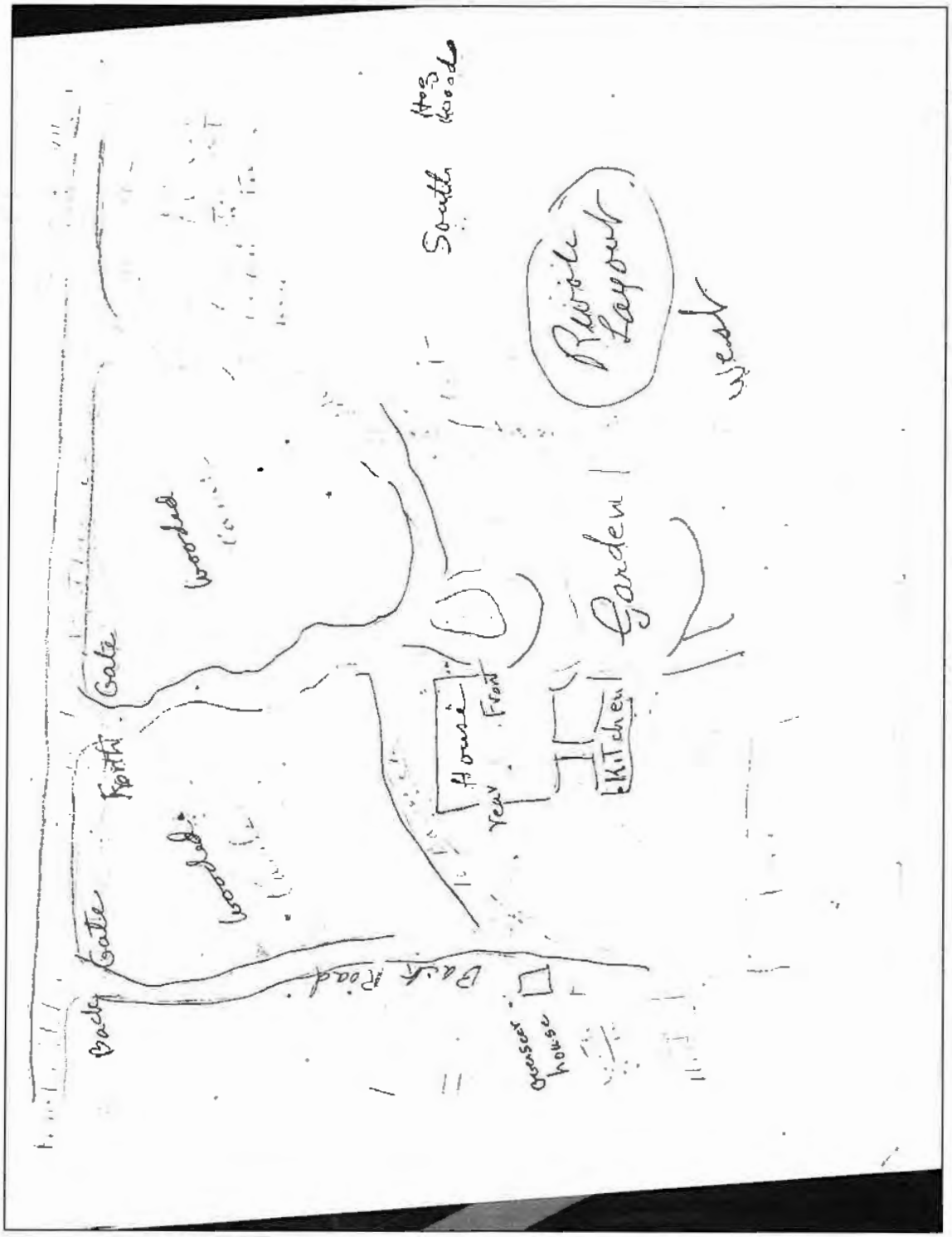


Figure 6. Hand drawn map of Rivoli Plantation.

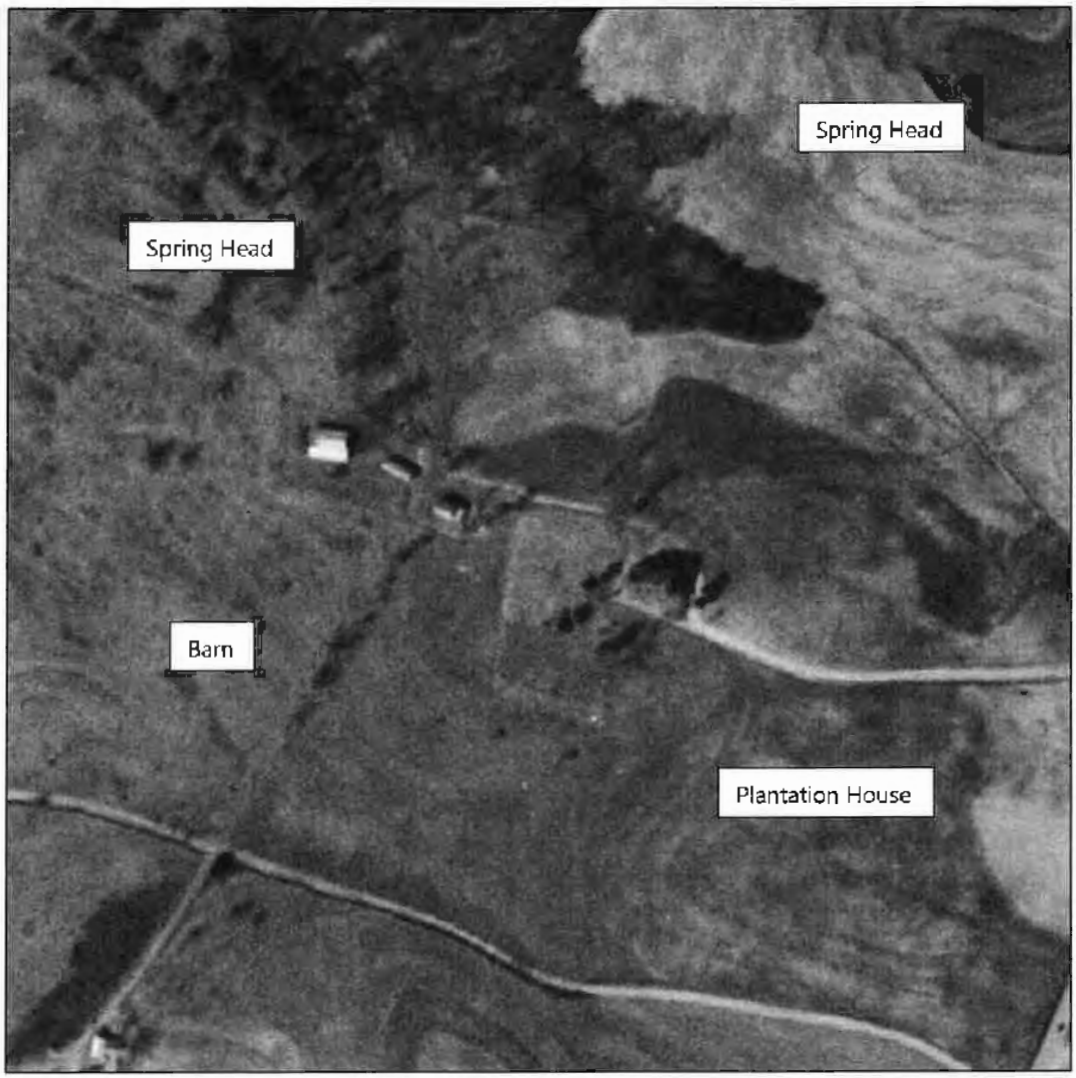
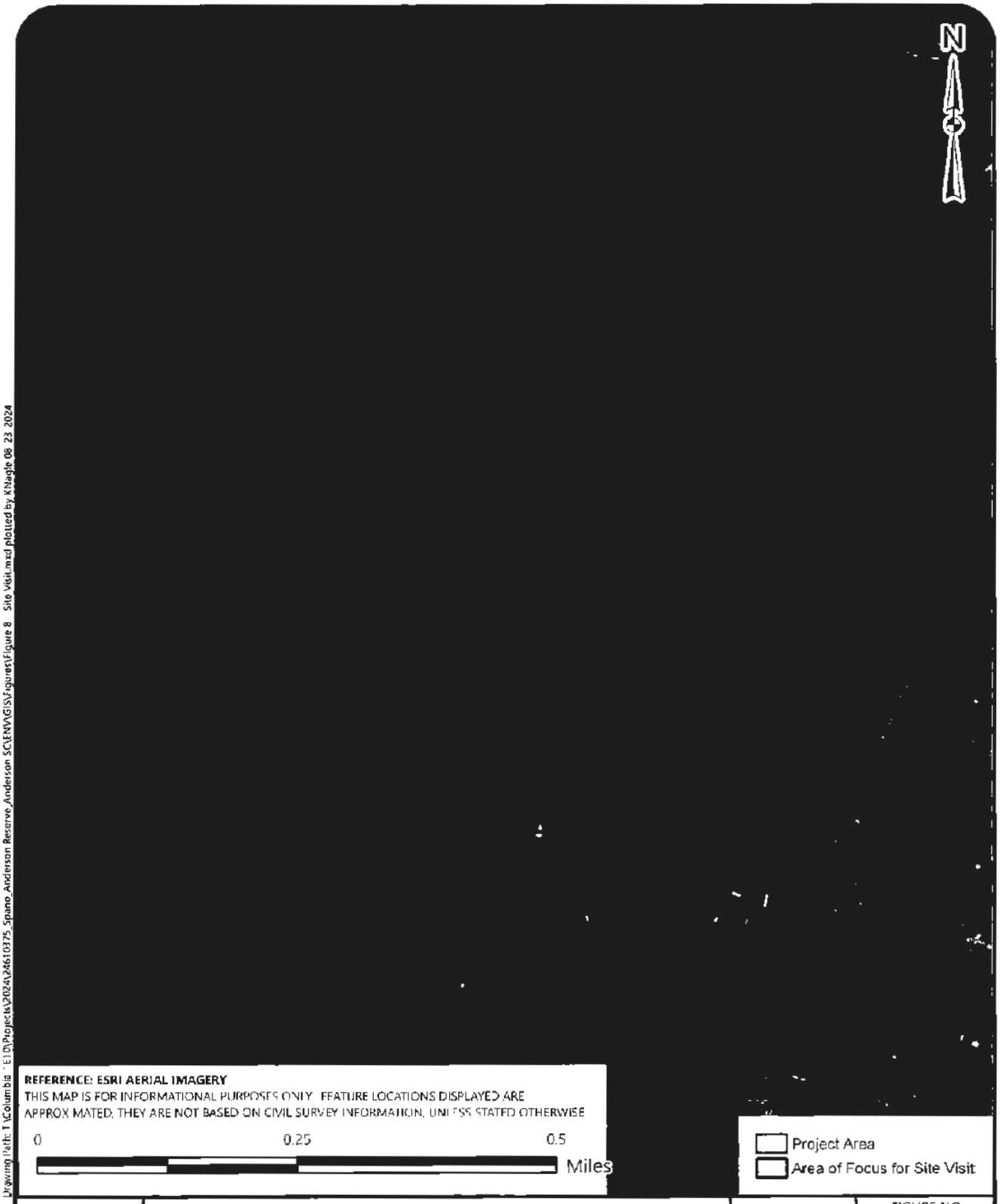


Figure 7. Aerial imagery from 1947 showing Rivoli Plantation, barn, and two outbuildings.



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Site Visit Focus Area

ANDERSON RESERVE
ANDERSON COUNTY, SOUTH CAROLINA

DATE: 8-23-24

PROJECT NUMBER 24600430

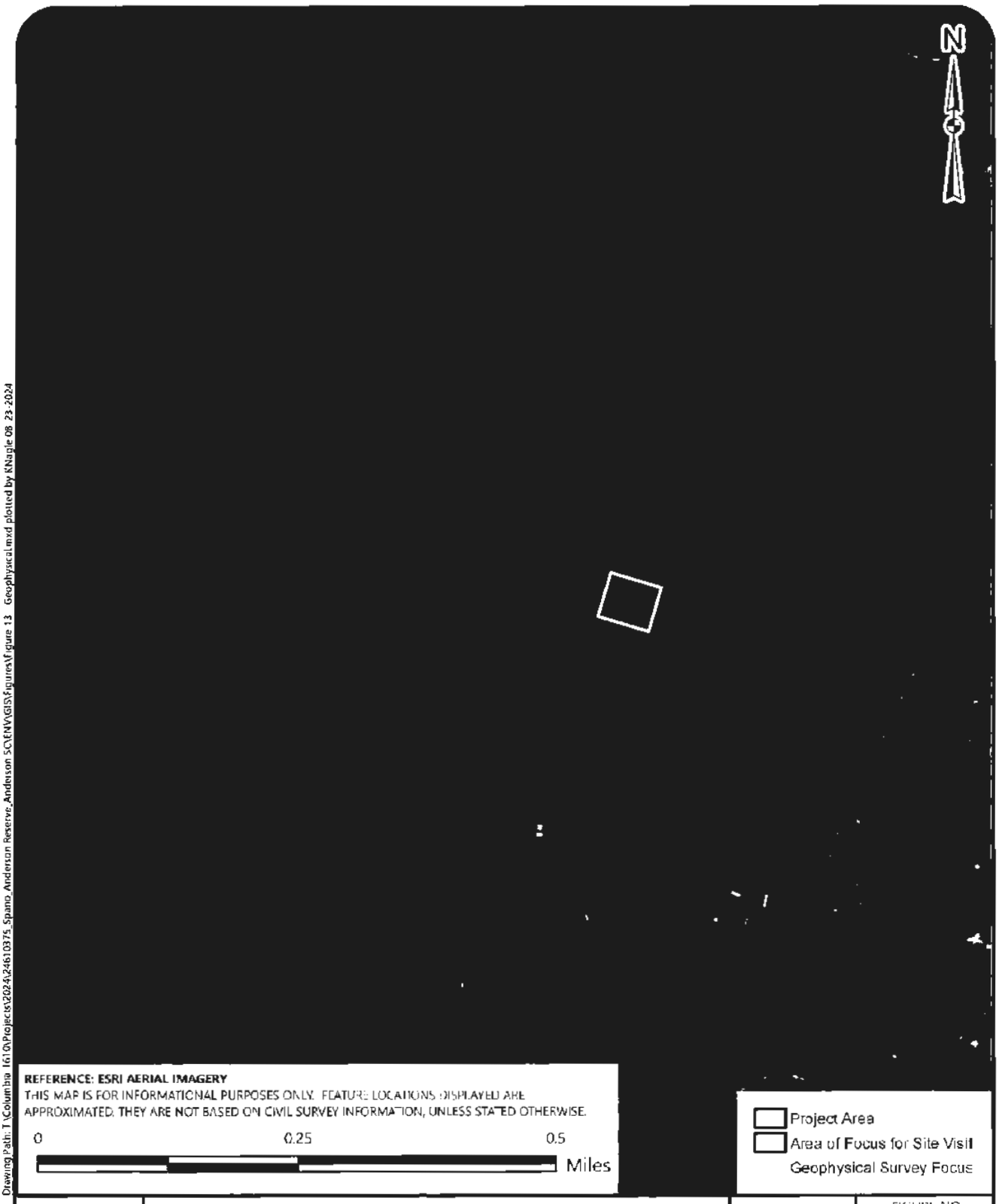
FIGURE NO. 8

Figure 9. Foundation of the main house, facing southeast.

Figure 10. One of the standing outbuildings, facing east.

Figure 11. Enclosure attached to barn and one barn footer, facing northeast.

Figure 12. Barn footer, facing north.



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Geophysical Survey Focus Area

ANDERSON RESERVE
ANDERSON COUNTY, SOUTH CAROLINA

DATE: 8-23-24

PROJECT NUMBER 24600430

FIGURE NO. 13

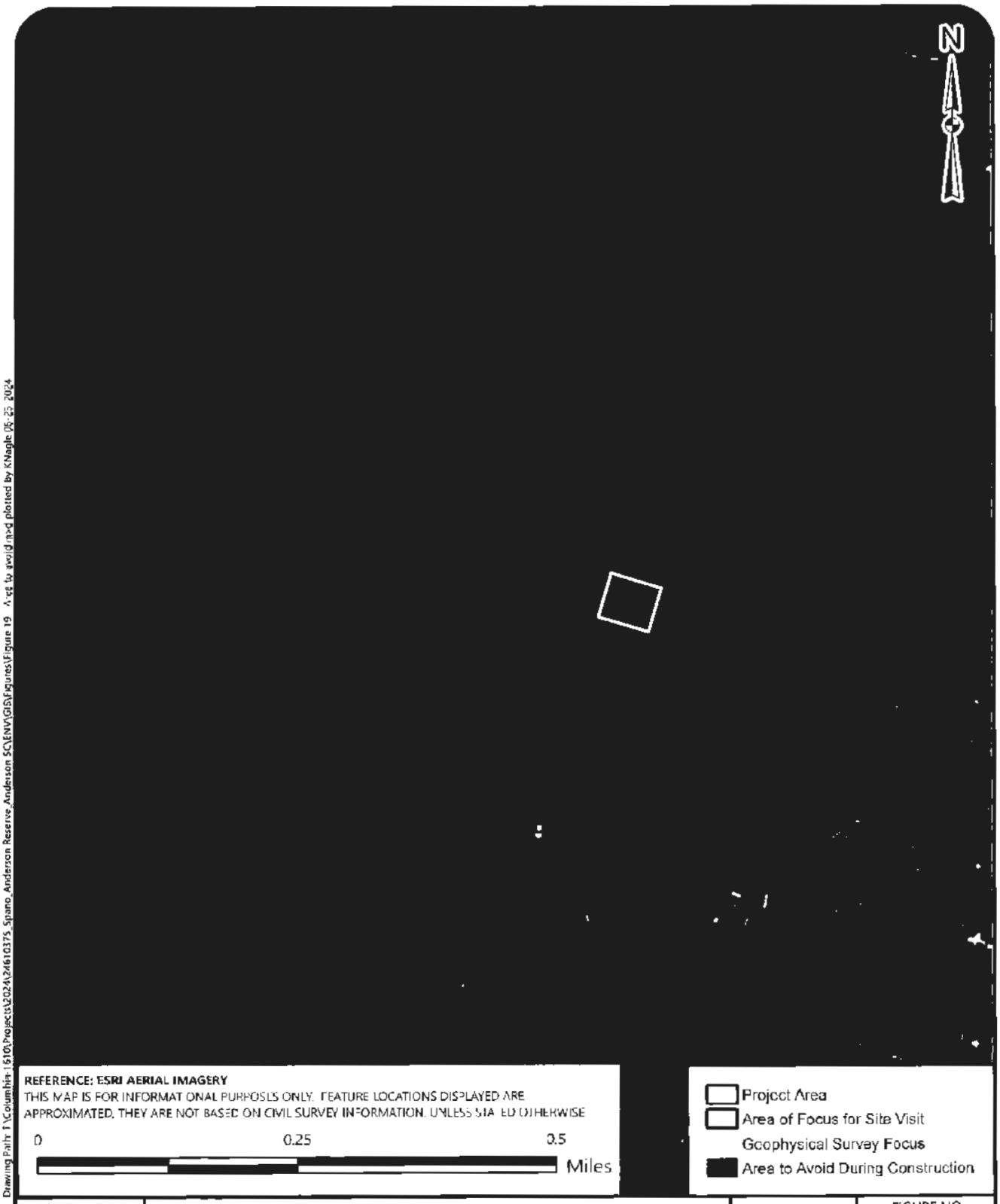
Figure 14. Area of interest behind the barn after vegetation clearing, facing southwest.

Figure 15. EM portion of geophysical survey of area behind barn, facing southeast.

Figure 16. GPR portion of geophysical survey of area behind barn, facing north.

Figure 17. Area of interest near spring head, facing east.

Figure 18. GPR portion of geophysical survey of area near spring head, facing southeast.



Drawing Path: T:\Columbia-1610\Projects\2024\24610375_Spano_Anderson Reserve_Anderson SC\ENV\GIS\Figures\Figure 19 - Area to avoid.mxd plotted by KNagle 08-23-2024

Area of Avoidance

ANDERSON RESERVE
ANDERSON COUNTY, SOUTH CAROLINA

DATE: 8-23-24

PROJECT NUMBER 24600430

FIGURE NO. 19

www.REEDTECHINC.com
reedtechinc@gmail.com
(803) 750-9971
P.O. Box 61104
Columbia, SC 29260

Technical Report

Geophysical Evaluation for Unmarked Graves

Rivoli Plantation

La France, SC

Prepared For:

Kimberly Nagle, M.S., RPA

Senior Archaeologist/Project Manager S&ME

134 Suber Road

Columbia, SC 29210

Prepared By:

Reed Tech Utility and Geophysical Locating

PO Box 61104

Columbia, SC 29260

Submitted on: August 15th[th], 2024

August 6th, 2024

Kimberly Nagle, M.S., RPA
Senior Archaeologist/Project Manager S&ME
134 Suber Road
Columbia, SC 29210

Re: Geophysical Evaluation for Unmarked Graves

Dear Ms. Nagle,

Reed Tech is pleased to submit this report of a geophysical evaluation of two areas of the Rivoli Plantation property near La France, in Anderson County, South Carolina completed on 8/6/24. Archived first-hand accounts suggest human burials may exist behind an old barn on the property. Using electromagnetic profiling and ground penetrating radar geophysical methods, the area behind the barn was evaluated. Another small area nearby has stones and other man-made features. For these reasons, this area was also evaluated. The study resulted in no evidence of unmarked graves. The following report reviews the methods and results of the geophysical evaluation.

Please do not hesitate to call if you have any questions concerning this report. We appreciate the opportunity to have collaborated with you on this project.
Sincerely,

Duke Brantley, PhD, PG
President
Reed Tech Utility and Geophysical Locating

Background

The evaluation site is located on the old Rivoli Plantation near La France in Anderson County, SC. The evaluation areas were primarily hardwood forest with patches of understory and briars. Kimberly Nagle of S&ME contacted Reed Tech Utility and Geophysical Locating to assist in identifying unmarked graves in these areas. A geophysical evaluation was conducted on 8/6/24 by Duke Brantley of Reed Tech Utility and Geophysical. Archeology field director Paul Connell was onsite for S&ME. The area has topography and erosion terraces are present. It is unknown if this is the original land elevation or if the elevation has been changed over time due to natural erosion or to previous land altering activity such as terracing. Figure 1 is a site location map showing the approximate locations of the evaluation areas.

Figure 1: Site location map. The yellow polygons identify the approximate locations of the geophysical evaluations in Anderson County, SC for potential unmarked graves (Google Earth Pro).

Technical Approach

Reed Tech completed the geophysical evaluations on August 6th, 2024, utilizing two geophysical methods to investigate the site:

Multifrequency Electromagnetic Profile Evaluation

A high-resolution electromagnetic profile (EMP) evaluation was completed using a GSSI EMP-400 multifrequency electromagnetic profiler. Two separate surveys were conducted both using three frequencies (10,000 Hz, 13,000 Hz, and 16,000 Hz) but different grids and orientation. The EMP data was collected on a hand-held Trimble Recon data logger that communicated with the EMP-400 unit via Bluetooth. The Trimble Recon has a GPS unit which is augmented by the Wide Area Augmentation System (WAAS) and is capable of high accuracy and real-time location data. The profiler was carried by hand approximately six inches above ground. The EMP method is useful at evaluating the shallow subsurface for both metallic and non-metallic conductive materials such as variations in soil conductivity which may be related to the presence/absence of graves.

Ground Penetrating Radar Evaluation

Reed Tech completed a detailed ground penetrating radar (GPR) evaluation over the site where accessible. Reed Tech utilized a Mala HDR radar unit outfitted with a 450 MHz antenna. Due to the near surface nature (< 6 feet) of typical graves, the 450 MHz antenna provides the optimum compromise between resolution and depth of penetration necessary to detect unmarked graves.

Results

The EMP and GPR data were analyzed and interpreted in the field and further analyzed in the office. None of the data display characteristics associated with graves.

Multifrequency Electromagnetic Profile Results

Reed Tech completed an EMP evaluation with parallel profiles around the entire property in two orientations. Once adequate survey coverage was achieved, the EMP field data were post-processed to produce a .dat file. These data were then processed using an inversion program to calculate the apparent conductivity and in-phase values for each EMP frequency collected (10,000 Hz, 13,00 Hz, and 16,000 Hz). The theme through most of the electromagnetic survey methods is that lower frequencies = deeper penetration at the cost of a courser resolution (targets need to be larger to

"resolve"). All acquired frequencies were processed and interpreted. Typically, the in-phase data (sometimes referred to as the metal detection mode) is more representative of buried metallic materials whereas the apparent conductivity (sometimes referred to as quadrature data) is more representative of non-metallic conductive variations in the subsurface. By evaluating both the in-phase and apparent conductivity response, the horizontal extents of the conductive and non-metallic subsurface anomalies can be characterized. Anomalies such as graves can often be identified by the contrast of the disturbed soils verses the surrounding undisturbed soils. No anomalies characteristic of graves were present in the two study areas for this project.

Ground Penetrating Radar Results

The GPR evaluation for unmarked graves was completed in two perpendicular X, Y, grids. Survey transects were spaced approximately two feet apart throughout the entire site where access allowed with existing vegetation/debris. No anomalies characteristic of graves were present in the two study areas for this project.

Conclusions

- Reed Tech completed a detailed electromagnetic profile (EMP) and ground penetrating radar (GPR) evaluation of the accessible evaluation areas.
- EMP data – no anomalies characteristic of graves were present.
- GPR data - no anomalies characteristic of graves were present.

Limitations

The detection of subsurface objects is dependent upon parameters that include size, physical composition, depth of burial, and soil conditions. The combination of these parameters may produce a response that is below the detection threshold for a given geophysical method. Electromagnetic geophysical methods, including EMP and GPR, have inherent limitations due to site and/or ground conditions. It should be noted that geologically, the evaluation area is characterized by topography and terracing. It is unknown if natural or man-made processes have taken away or added material to the study areas. Reed Tech Utility and Geophysical Locating is not an archeological firm, and the work completed by us on this project was strictly geophysical in nature.

Attachment 2 – New South Associates 2024 letter report

NEW SOUTH ASSOCIATES ARCHAEOLOGISTS • HISTORIANS

a women owned small business

October 28, 2024

Mr. Stanley Hix
217 Fants Grove Circle
Anderson, South Carolina 29625
(919) 816-6999

RE: Identification of Potential Cemetery Areas in the Anderson Reserve Tract in Anderson County, South Carolina

Dear Mr. Hix:

New South Associates, Inc. (NSA) conducted a preliminary archaeological site visit at two areas within an approximately 174.15-acre parcel (Parcel No. 420001010) in Anderson County, South Carolina on October 24, 2024 (Figure 1; Anderson County Clerk of Courts 2024). These site visits were completed at the request of the client, Mr. Stanley Hix, to determine whether potential cemeteries were present within a proposed development area referred to by developers, Spano and Associates, Inc., as the Anderson Reserve. This parcel is located on the northwest side of the intersection of Fants Grove Circle and SC 187.

Previous investigations of the property determined that it was formerly part of the Rivoli Plantation (Naglc and Connell 2024). A site visit by S&ME identified structural remains interpreted as part of the plantation and ground penetrating radar (GPR) was utilized on select portions of the property to identify potential gravesites. No gravesites were located. Members of the local community believe that potential burial areas were located on other portions of the property than were GPR surveyed by S&ME. Professional mortuary archaeologists from NSA were asked to examine potential gravesite areas identified by the local community to confirm whether there were surface indications present that worthy of further cemetery investigation. Dr. Hugh B. Matternes, RPA served as the Senior Mortuary Archaeologist and Principal Investigator for this project and Leigha Williams, MA, RPA was the Mortuary Archaeologist. They met with local informants, Stanley and Scott Hix who grew up next to the Anderson Reserve tract and escorted the survey team to the areas of interest.

Methods

Historic graves and cemeteries that developed in rural Southern environments, such as the Anderson Reserve tract, may be less clearly defined than those emerging in more urban areas, making rural-based burial grounds more difficult to detect. The following surface features can indicate the presence of potential burial sites:

GEORGIA
HEADQUARTERS
6150 East Ponce de Leon Ave
Stone Mountain, GA 30083
770-498-4155

565 North Milledge Ave
Athens GA 30601
770-498-4155

SOUTH CAROLINA
1819 Hampton St
Columbia, SC 29201
803-771-7003

NORTH CAROLINA
1006 Yanceyville St
Greensboro, NC 27405
336 379 0433

TENNESSEE
1629 Fatherland St
Nashville, TN 37206
615-262-4326

VIRGINIA
3975 University Dr Suite 120
Fairfax, VA 22030
703-719-8307

www.newsouthassoc.com Founding Member of the American Cultural Resources Association www.acra-crm.org

1. Human-sized, cigar-shaped depressions or mounds;
2. Formal stone, metal, concrete, or wooden grave markers;
3. Dressed or undressed fieldstones arranged as headstones and/or footstones;
4. Concentrations of mortuary-associated plants, such as vinca, narcissus (daffodils), cedar, hemlock, crepe myrtle, gardenia, spirea, roses, lilies, and/or irises;
5. Stone, metal, wood, or floral enclosures that restrict the land from use for other (particularly agricultural) purposes;
6. Oval or rectangular concentrations of stone, glass, wood, metal, seashells or plastic containers used to outline a potential grave's dimensions;
7. Low oval or rectangular piles of stones;
8. Maintained areas where vegetation and unwanted debris have been removed; and/or
9. Oval or human-sized color/plant differences in mown areas.

Ground surfaces within the survey area were systematically examined for these surface features. When potential surface features were found, they were marked with pin flags and assigned preliminary inventory numbers. The locations of these markers were digitally logged using a Juniper Systems Geode GNSS Device. Spot probing using a ceramic-steel probe was conducted at both areas to assess underlying soil compaction and help confirm some surface observations. Not all potential gravesites were probed and no systematic probe survey was performed at either area.

Results

Two areas within Parcel No. 420001010 were systematically examined for surface features (listed above) that indicate the presence of potential burials. At the time of the investigation, the survey areas were wooded in adult (about 20-40 feet tall) pine and mixed hardwood trees with a moderate amount of underbrush, and heavy leaf litter covering the ground surface (Figure 2). The investigation resulted in the identification of 16 potential burials in Area 1 and 17 potential burials in Area 2 (Figures 3 and 4).

Area 1

Area 1 is located on a terraced hillside towards the southeastern portion of the survey parcel (Figure 2a). The area contained a number of eastern cedars, a tree commonly associated with cemeteries in the American South (Coco et al. 2023). Terracing and erosion contributed to the loss of most original surface soils and subsoil was encountered near or at the ground surface. While dry conditions were recognized as a contributing factor, spot probing revealed impenetrable soils, commonly associated with subsoil environments, were present at the ground surface. A number of fieldstones were observed across the general area, however the vast majority of these were too large or small to be adequately used as fieldstone markers. One large fieldstone towards the southern end of the examination area exhibited a number of indentations reminiscent of pictographs. Consultation with Dr. Johannes Loubser, a specialist in rock art, confirmed that the observed marks were not anthrogenic rather were the result of natural stone weathering. Among rock art specialists the observed pattern is referred to as 'gator skin weathering' (Loubser 2016).

Potential fieldstone markers composed of unmodified quartzite, feldspars, or igneo-metamorphic stone indicated the presence of potential gravesites. Similar locally derived stone were commonly used for grave markers among southern communities lacking access to more formal markers. Stones observed at Area 1 tended to be blocky and within sizes consistent with fieldstone grave markers. Paired stones, potentially representing head and foot stones were identified. The distribution of these potential gravesites are provided in Figure 3.

Area 2

Area 2 is located on the summit of an unnamed hill northwest of Area 1. The hill was forested and there were no paths leading directly to its summit (Figure 2b). Unlike Area 1, intact surface soil horizons appeared to be present and spot probing was able to confirm that less compacted soils were present and detectable on the hill top. A concentration of 17 potential gravesites, identified by probable fieldstone markers, linear depressions or combinations of probable markers and depressions. Paired potential head and footstones were common. The distribution of these features are provided in Figure 4. Fieldstones at Area 2 tended to be tabular, in imitation of more formal tablet grave markers; these stones were set vertically and most appear to have sunken into the ground surface. All were highly weathered. The location of Area 2 is consistent with many historic period burial areas in rural settings. They tend to occupy non-arable areas on higher ground to maximize use of farmable land and so that the deceased are metaphorically closer to God (Coco et al. 2023).

Recommendations

Both Areas 1 and 2 exhibit surface characteristics consistent with historic period rural cemeteries and further examination is recommended to confirm whether grave sites are present. Area 1 would be considered as a low-moderate possibility of having a cemetery while Area 2 was judged to be a high potential area for a cemetery.

The forested and highly compacted soil conditions in Area 1 limit testing strategies. Without substantial ground clearing GPR could only be used on a limited basis. The highly compacted soils in Area 1 limit a probe's ability to penetrate and provide clear indications of soil compaction differences that would differentiate grave from non-grave conditions. Alternatively, NSA recommends that slot trenches, which could be excavated across select sample of potential gravesites be used to confirm whether graves sites are present. Trenches manually dug approximately 12-18 inches wide across the grave and to a depth of about 12 inches would provide a window where grave shaft stains, if present would be visible. No excavations would impact underlying burial chambers. If grave stains were not encountered in any of the trenched potential gravesites, NSA feels that there would be sufficient evidence to reject Area 1 as a potential cemetery. If sampling revealed evidence of grave stains, delineation of the burial area may be possible after sufficient rainfall has moistened the soil. If gravesites are present, a 30-foot wide grave-free buffer should established around the cemetery to ensure that unmarked gravesites are adequately protected.

Area 2 is also forested and would require substantial clearing before GPR could be implemented. Spot probing, however indicated that soil conditions were currently capable of conveying differences in soil compaction that would indicate the presence of potential gravesites. NSA recommends that probing be conducted to verify the presence of unmarked and poorly potential gravesites and establish a 30-foot wide grave-free buffer around the potential cemetery to ensure that unmarked gravesites are adequately protected.

This letter report provides evidence that two potential, previously unidentified cemeteries may be present within Parcel No. 420001010. If you have any questions regarding these findings or require additional information, please feel free to call Hugh Matternes, Senior Mortuary Archeologist at (770) 498-4155 ext. 114 or by email at mmatternes@newsouthassoc.com. Mortuary archeologist, Leigha Williams may also be contacted at (770) 498-4155 ext. 137 or by email at lwilliams@newsouthassoc.com.

Sincerely,

NEW SOUTH ASSOCIATES, INC.

Hugh B. Matternes, PhD, RPA
Senior Mortuary Archeologist

Leigha Williams, MA, RPA
Mortuary Archaeologist

Figures
Figure 1. Project Location
Figure 2. Current Conditions within the Survey Areas
Figure 3. Preliminary Survey Results Map for Area 1
Figure 4. Preliminary Survey Results Map for Area 2

Sources Cited

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Loubser, Johannes

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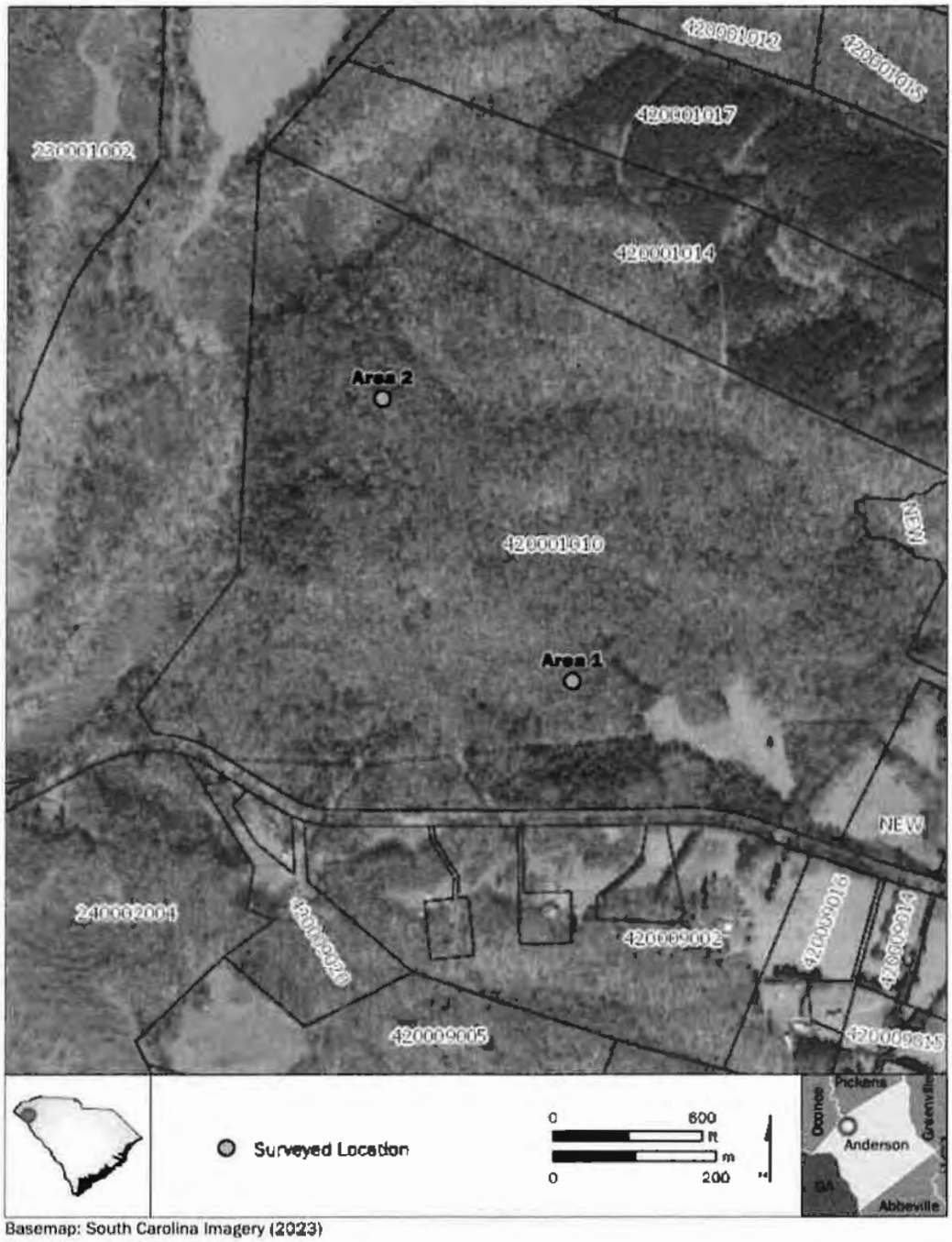
Nagle, Kimberly, and Paul Connell

2024 Cultural Resources Literature Review, Site Visit, Geophysical Survey, Anderson Reserve. S&ME, Inc., Columbia S.C.

Figure 1. Project Location



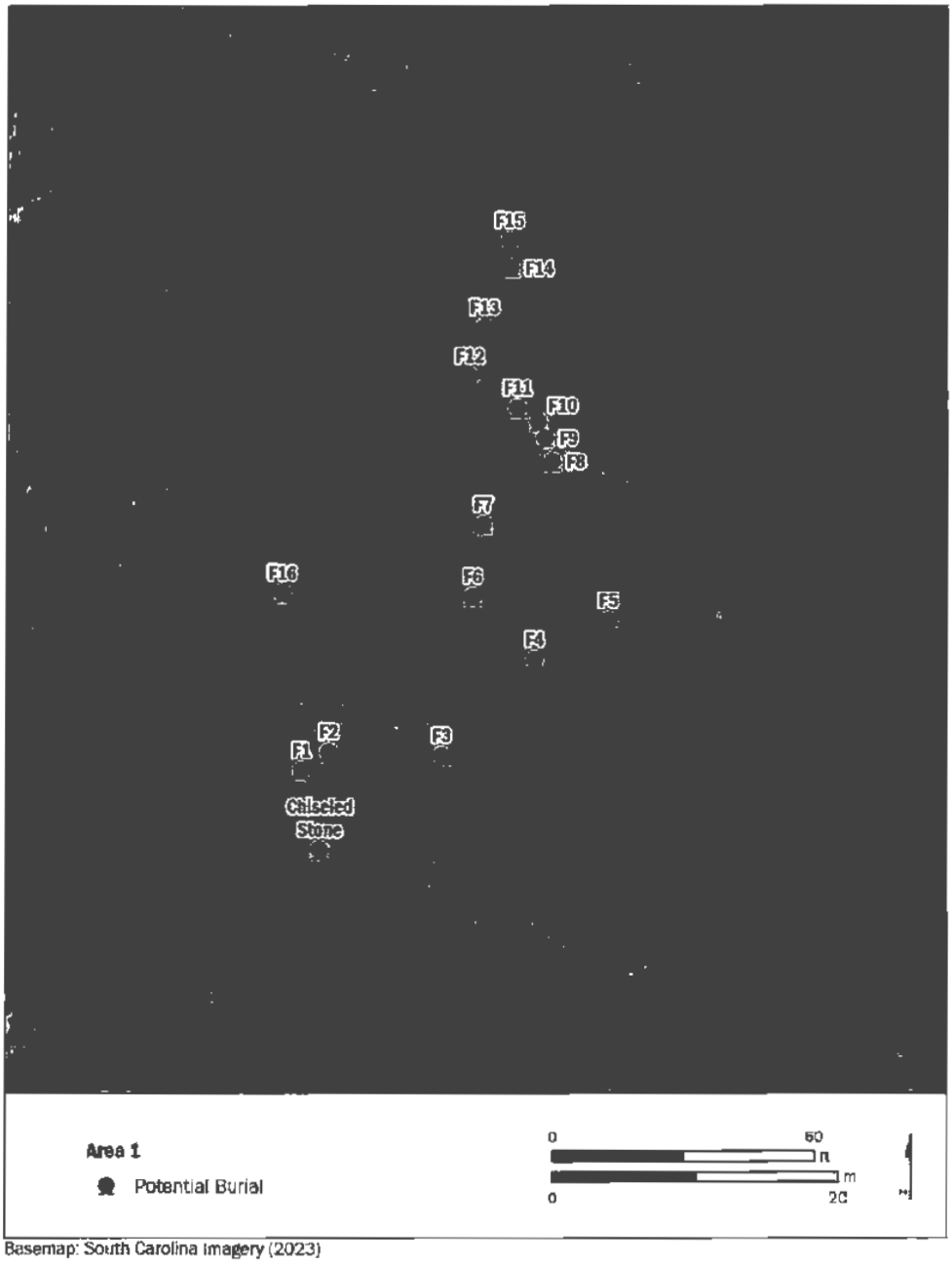
Basemap: South Carolina Imagery (2023)

Figure 2. Current Conditions within the Survey Areas

a. Area 1 Looking Northeast

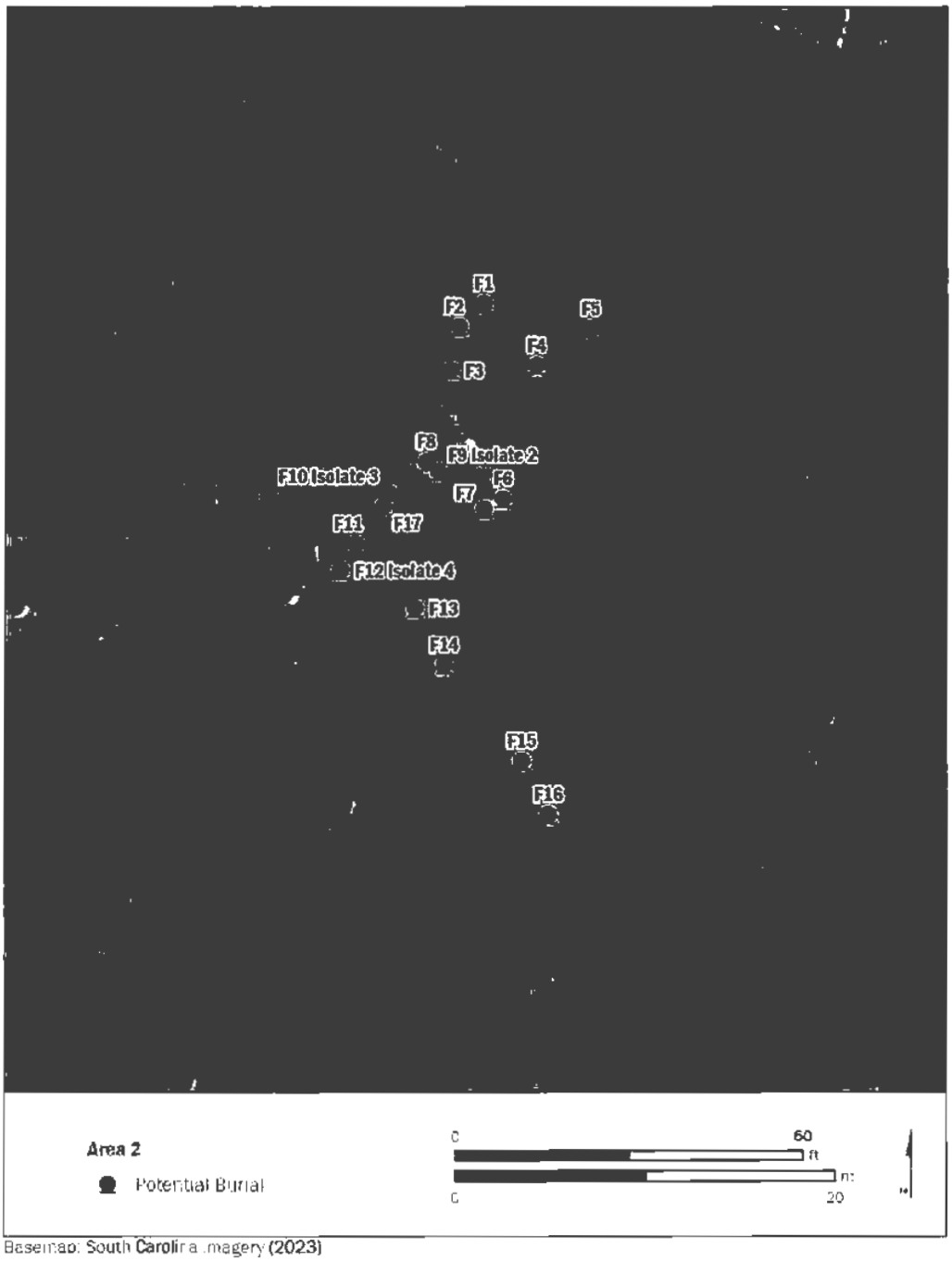
b. Area 2 Looking Southeast

Figure 3. Preliminary Survey Results Map for Area 1



Basemap: South Carolina Imagery (2023)

Figure 4. Preliminary Survey Results Map for Area 2



Basemap: South Carolina Imagery (2023)

Attachment 3 – Preservation South 2024 letter report

Rivoli Plantation Cemetery Survey

Background:

Preservation South was contacted to conduct a ground penetrating radar survey of sites associated with the former Rivolli Plantation in Anderson County, South Carolina. Rivolli was established in the 19th century and owned by the Adger family who were prominent members of South Carolina society and owned multiple plantations across the state. The plantation was worked by enslaved African Americans who in many cases were born, lived and died on the same property. Due to the rural nature of the property and the lack of designated churches for the enslaved most plantations would have at least one cemetery for enslaved workers. Sometimes these would be adjacent to the family cemetery or in some cases they may be subdivided in a caste system between house and field slaves.

Figure 1: Portion of an 1897 map showing the site of Rivoli Plantation.

The remaining property is being subdivided for development of a subdivision and local citizens raised concerns about the existence of an unmarked cemetery on the property that could be destroyed by the grading activity. They had compiled a poem written about cemetery hill on the property as well as oral history accounts of the cemetery's existence. They had also walked the site looking for signs of the cemetery and had identified a few areas of interest.

Scope and Methodology:

Due to dense tree cover and access limitations a wide spread survey of the site was neither practical no physically possible. Therefore, the survey would be limited to smaller areas with a higher likelihood of potential burials. When evaluating locations to be scanned the site was first evaluated to see if there were physical features that aligned with 19th century burial practices. During this time cemeteries were frequently established on high ground or hill tops. The topographical map of the site clearly shows the elevation changes between the creek bottom to the northwest and the higher ground to the south and east. The springheads and their associated creeks are also clearly visible in the center of the property, and it is unlikely that those gullies would have been used for burials. The largest high ground location is where the house and its associated support structures were once located so this area was unlikely to hold any burials. Survey of the historic USGS aerials for the site also indicates that much of the area was heavily terraced during the first half of the twentieth century. Terracing was a popular method of erosion control during this period where slopes we cut and filled to create step like terraces that were less likely to erode than a natural slope. This method is also highly destructive and any burials in those terraces would almost certainly have any surface stones or features removed or destroyed in the process. This further narrowed down the overall site to one hill at the west end of the property adjacent to the creek bottom. This hill aligned with the description of the cemetery hill in the poem, it was largely untouched by the terracing, and retained its tree cover during periods when the majority of the site had been converted into open fields. This meant that this site would have been historically appropriate for 19th century burial practices and appeared to have been largely unaltered throughout the period the site had been occupied and farmed. Based on this the determination was made to focus the survey on this site initially and if nothing was found we would expand the search to other locations with potential for burials.

Equipment and readings:

A Ground Penetrating Radar (GPR) survey was completed using a GSSI UtilityScan GPR System with a 350 mHz hyperstacking antenna. The GPR system sends pulses of electromagnetic energy or radar into the earth through a transmitter. The radar waves propagate through the subsurface and are partially reflected back to the receiver when materials with different electromagnetic characteristics (dielectric properties) are encountered below the surface. Soil that is excavated and used to backfill a grave shaft can have different dielectric properties (conductivity) than the surrounding undisturbed soil. Changes in subsurface materials such as disturbed soil in a grave shaft and vaults or intact coffins in a grave can be detected by the GPR system. The GPR system detects these changes and shows them as reflections or anomalies on the radar profiles.

The GPR system operates on a three wheeled cart with a calibrated survey wheel. North-south transects of GPR data are collected across different areas within the cemetery. These transects are located across areas between stones and over any visible depressions. The data processing steps included correcting for time zero, applying an automatic gain control and a background removal to eliminate horizontal banding or ringing in the GPR data. Unmarked graves can be represented as a distinct reflection or hyperbola on the GPR profiles. When these reflections appear at a similar location on adjacent profiles, this is evidence of a potential unmarked burial.

The site:

The hill is oddly circular in form and does not appear natural, especially based on the sharp turn of an adjacent stream to go around it. The appearance of an altered water course could be a result of the terracing work by could also potentially be caused by the construction or expansion of the hill. This area is known tu have had a long history of Native American occupation and there have been multiple documented mounds in the region including one excavated by John C. Calhoun's overseer in the 19th century. In addition to the burial of enslaved individuals this hill should be investigated to see if it is a natural formation or a manmade construct.

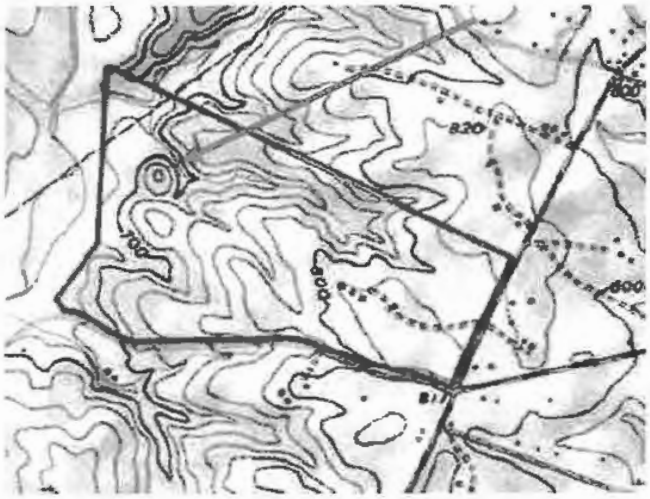


Figure 2: Hill noted with orange arrow on USGS map, Rivoli tract outlined in red.

Figure 3: 1947 USGS aerial photo, circular hill identified with orange arrows, note intact tree cover and terracing lines in the surrounding fields.

The top of the hill was initially visually aurveyed to see if there were any potential signs of human activity either from occupation or burial. Burals of the enslaved were not marked with elaborate or costly stones, the use of field stones picked up from the surrounding landscape to make the head, and sometimes the foot of the grave were the only markers, if they were marked at all. The stones were almost always arranged in an east west orientation which was in-keeping with the Judeo-Christian beliefs of their enslavers. The visual survey revealed multiple locations where field stones were sticking up out of the ground in an un-natural way, frequently in what appeared to be pairs. The pairs were checked for alignment using a compass and were close to an east west alignment. There were also linear depressions observed that also had a similar orientation.

Figure 4: Fieldstones stones marked with white flags.

Figure 5: Paired fieldstones oriented east/west

Given the physical evidence on site, it was determined that scanning the area with the Ground Penetrating Radar unit. The hill has a significant amount of trees and undergrowth as well as downed trees which limit the ability to scan the area fully. Where the site was clear enough to get the unit through 8 transects were run roughly north to south to have the greatest likelihood of intersecting a burial. The scans encountered 14 anomalies consistent with burials on site at depths between 3-5 feet.

Given the age and makeup of the soils in the area it is unlikely that there are significant amounts of intact remains within the burials. It the 19th century there were no sealed vaults or chemical embalming available and enslaved individuals were buried in a shroud or a simple wood coffin. The GPR shows the striation of various soil layers based on the changes in the density of each layer. When a burial is encountered those layers are disrupted because of the burial shaft excavation and

then the backfilling of the shaft. The GPR will typically pick up the bottom of the burial shaft where the radar encounters the harder undisturbed soil, it also can potentially detect the sides of the shaft where the backfill and undisturbed soil intersect.

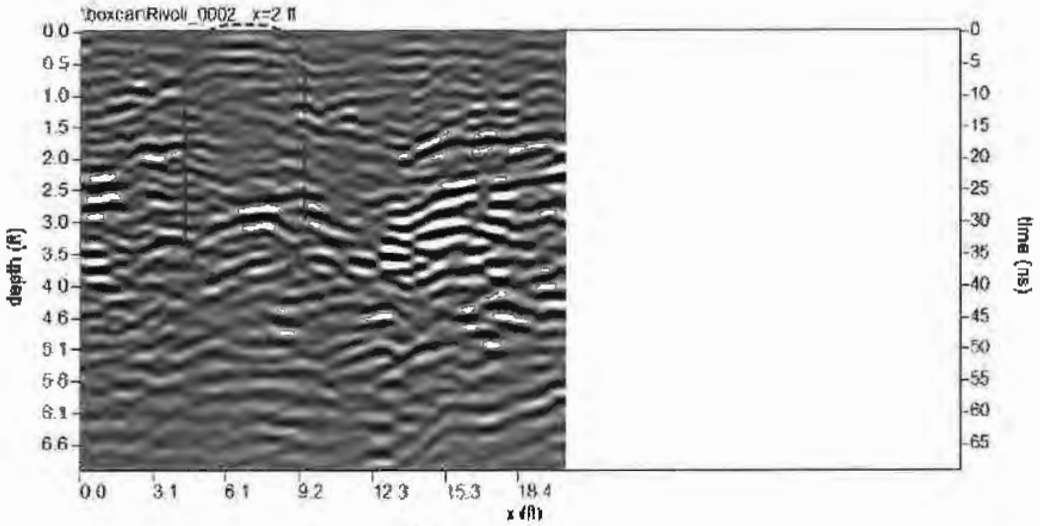


Figure 6: Example of an anomaly shown in red, bold reflection of the bottom of the shaft at the 3 foot depth.

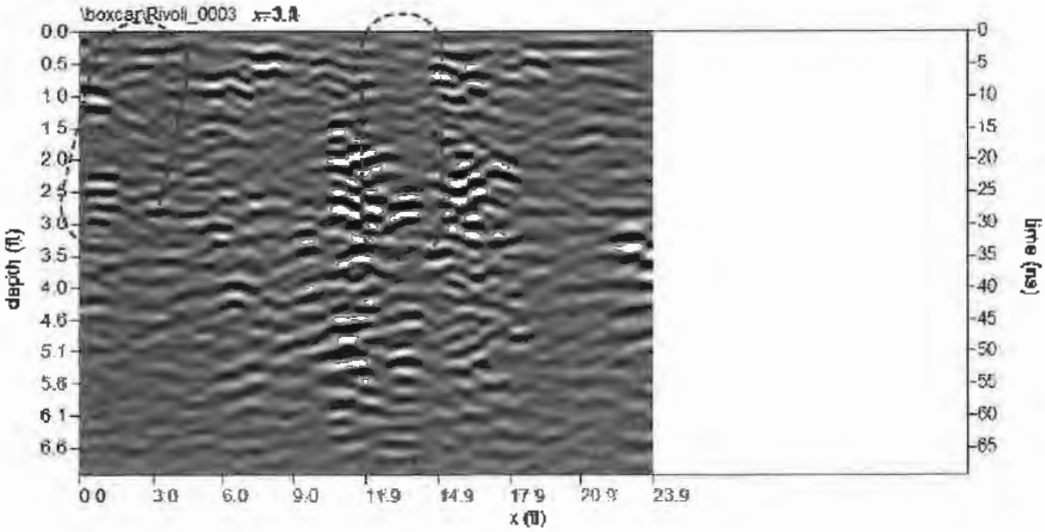


Figure 7: The left anomaly is fainter, while the right anomaly shows the bottom of the shaft at around 2.5 feet and the reflections of the sides of the shaft going down. The shaft appears to be approximately 3 feet across which is expected.

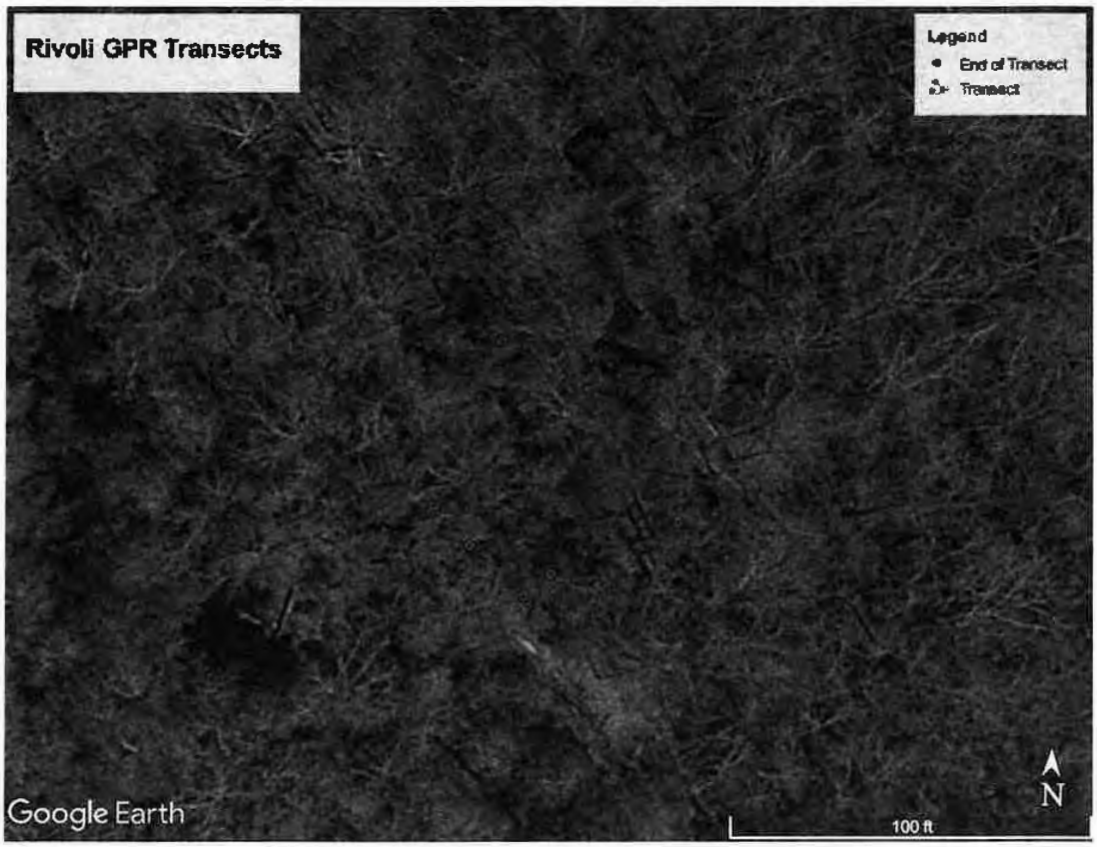


Figure 8: Transect Map overlayed on a Google Earth image of the site.

These burials were found across the open areas at the top of the hill and it is highly probable that there are additional burials in between the ones located in this scan.

Recommendations:

The site is overgrown and difficult to access in its current state with the GPR equipment. Selective clearing of the underbrush should be conducted in order to fully scan the hill. This will allow all of the burials to be documented and a perimeter around the cemetery can then be set to protect it during the construction phase and in the future.

The hill is itself an anomaly that should be protected, as an almost circular dome shaped hill in the flood plain, it does not appear natural. There is documentation of mounds built by native cultures in the area, one example was excavated by John. C. Calhoun's overseer in the first half of the 19th century a few miles away. It would be advisable to have qualified experts in the archeological field evaluate the hill to see if it is of greater importance.

The cemetery should be fenced to protect it from vandalism in the future, especially once development highlights its existence and makes it more accessible. Warning signs of SC Law making desecration a crime should also be posted around the perimeter.

Report Prepared by:

Preservation South, LLC

In consultation with:

Seramur and Associates, PC

STATE OF SOUTH CAROLINA)
) GRAVE SITE PROTECTIVE COVENANTS
COUNTY OF ANDERSON) ANDERSON RESERVE

THESE GRAVE SITE PROTECTIVE COVENANTS (the "Protective Covenants") are hereby granted this ___ day of _____, 2025 by SPANO & ASSOCIATES ASHEVILLE, LLC ("Declarant").

RECITALS

WHEREAS, Declarant established a subdivision known as Anderson Reserve located in Anderson County, South Carolina, more particularly described on the legal description attached hereto as **Exhibit A** and incorporated herein by reference (the "Property");

WHEREAS, a portion of the Property more particularly shown as "Potential Grave Site to Be Protected "on **Exhibit B** attached hereto and incorporated herein by reference (the "PGS") may contain graves which Declarant desires to protect;

WHEREAS, Declarant desires to place certain protective covenants on the PGS for the protection of possible historic, religious and sentimental concerns and as such, Declarant has elected to place certain protective covenants on the PGS, so that it remains substantially in its current condition forever for the benefit of the current and future owners of Property and the family members of any person interred on the PGS; and

WHEREAS, the PGS shall be transferred to and owned by Anderson Reserve HOA, Inc. (the "Association") as part of the common area upon completion of the project;

NOW THEREFORE, Declarant hereby declares that the PGS, shall be held, transferred, conveyed, leased, occupied or otherwise disposed of and used subject to the following protective covenants, which shall run with the land and be binding on all heirs, successors, assigns (they are included in the term, "Declarant," below), lessees, or other occupiers and users.

1. **Protections**. The PGS shall remain undeveloped and excavating, erecting, constructing, or releasing wastes on the PGS is prohibited. Notwithstanding anything contained in this paragraph to the contrary, minimal work, including but not limited to surface grading and landscaping, shall be permitted during the development of the Property for the purposes of utility easements, passive recreational uses and drainage.

2. **Amendment**. After recording, these Protective Covenants may only be amended by a recorded document signed by the Declarant or the Association and the Planning Commission for Anderson County. There shall be no obligation to allow an amendment.

3. **No Rights Granted to the General Public**. It is expressly understood and agreed that these Protective Covenants do not grant or convey to members of the general public any rights of ownership, entry or use of the PGS. These Protective Covenants are created solely for the protection of the PGS and Declarant reserves for the Association, the ownership of the fee simple estate and all rights appertaining thereto, including without limitation the rights to exclude others and to use the property for all purposes not inconsistent with these Protective Covenants. Notwithstanding anything contained herein to the contrary, family members of anyone interred in the PGS shall have an easement for pedestrian ingress and egress over and across the PGS.

Further, for the benefit of the current and future owners of the Property, Declarant specifically reserves the right for the current and future owners of the Property to engage in any outdoor, non-commercial recreational activities which are consistent with the continuing condition of the PGS and the right for the current and future owners of the Property to engage in all acts or uses not prohibited by these Protective Covenants and which are not inconsistent with the protective purposes of these Protective Covenants and the preservation of the PGS.

4. **Compliance Inspections**. The Planning Commission for Anderson County or their authorized agents shall have the right to enter and go upon the Property, to inspect the PGS and take actions necessary to verify compliance with these Protective Covenants.

5. **Enforcement**. The Declarant grants to the Planning Commission for Anderson County a discretionary right to enforce these Protective Covenants in a judicial action against any person or other entity violating or attempting to violate these Protective Covenants; provided, however, that no violation of these Protective Covenants shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing agency shall be entitled to a complete restoration for any violation, as well as any other judicial remedy such as civil penalties.

6. **Maintenance Responsibility**. The Association shall be responsible for the maintenance and upkeep of the PGS.

7. **Rights of Declarant and Owners of the Property**. The Declarant, the owners of the Property, their successors and assigns, shall have the right to use the PGS in any manner not inconsistent with these Protective Covenants.

8. **Subdivision Prohibited.** The Declarant, the Association, their successors and assigns, are hereby prohibited from further subdividing the PGS.

9. **Severability and Governing Law**. If any provision of these Protective Covenants is found to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof, and for the purposes hereof all covenants as contained herein shall be deemed to be severable each from each other without qualification. These Protective Covenants and the separate provisions thereof shall be construed and enforced in accordance with the laws of the State of South Carolina without regard to principles of conflict of laws.

IN WITNESS WHEREOF, the Declarant has duly executed these Protective Covenants the date written above.

IN THE PRESENCE OF: SPANO & ASSOCIATES ASHEVILLE, LLC

_____ By:_____

Witness 1 Ralph Spano, Member

_____

Witness 2/Notary

STATE OF SOUTH CAROLINA)
) Acknowledgment
ANDERSON COUNTY)

I, _____, a Notary Public of the above-stated County and State, do hereby certify that Ralph Spano, as Member of SPANO & ASSOCIATES ASHEVILLE, LLC, personally came before me this day and acknowledged the due execution of the foregoing instrument as the act and deed of the Declarant.

Witness my hand and notarial seal, this the _____ day of _____, 20___ .

_____

Notary Public for South Carolina

My Commission Expires:_____

EXHIBIT A

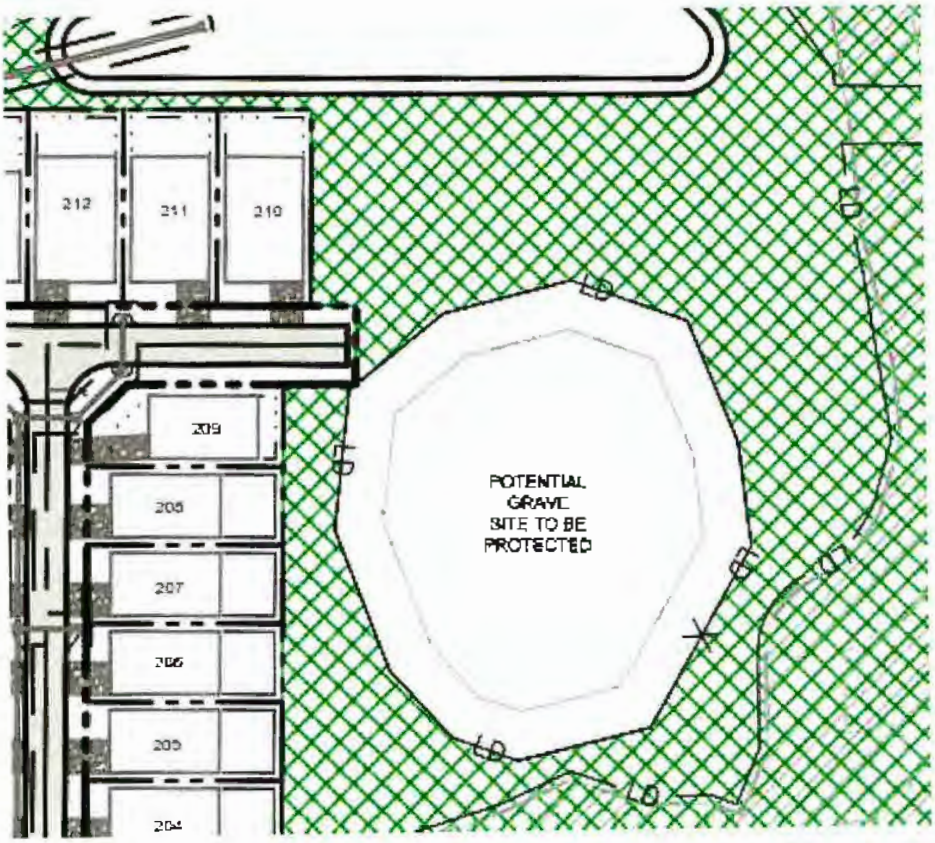
ALL that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Anderson, being shown and designated as Tract 1, containing 132.180 acres, more or less, on a plat entitled "SURVEY FOR SPANO & ASSOCIATES ASHEVILLE, LLC" prepared by Freeland & Associates, Inc., dated May 22, 2024 and recorded June 24, 2024 in Plat Book S3163 at Page 3 in the Office of the Register of Deeds for Anderson County, SC. Reference to said plat is hereby made for a more complete metes and bounds description thereof.

This being a portion of the property conveyed to Spano & Associates Asheville, LLC by deed of AnMed Health dated May 20, 2024 and recorded May 22, 2024 in the Register of Deeds Office for Anderson County, South Carolina in Book 17381 at Page 295.

For informational purposes only: p/o TMS# 420-00-01-010

EXHIBIT B

POTENTIAL GRAVE SITE TO BE PROTECTED



ELECTRONICALLY FILED - 2025 Jun 02 4:33 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**TENTH JUDICUAL CIRCUIT**
COUNTY OF ANDERSON	)	
	)	**C/A No. 2025-CP-04-00328**
Hubert N. Smith, Jr. and Stanley Hix,	)	
	)	
	)	
***Plaintiff/Appellant*,**	)	**ANDERSON COUNTY PLANNING**
	)	**COMMISSION'S PRE-HEARING BRIEF**
v.	)	
	)	
Anderson County Planning Commission and Spano & Associates, Inc.,	)	
	)	
	)	
Defendant/Respondent.	)	
	)	

The Defendant/Respondent Anderson County Planning Commission (ACPC) hereby submits the following as its Pre-Hearing Brief:

ARGUMENT

ACPC hereby adopts and incorporates herein by reference the arguments contained in the Defendant/Respondent Spano & Associates, Inc.'s Pre-Hearing Brief and in the Exhibits thereto, all filed June 1, 2025.

CONCLUSION

For the reasons stated, the Plaintiff/Appellant's appeal should be denied, and this action should be dismissed with prejudice.

HOLCOMBE BOMAR, P.A.

s/ E. Brown Parkinson, Jr.

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Todd Russell Flippin
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Attorneys for Defendant Anderson County Planning Commission

June 2, 2025

Spartanburg, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Hubert N. Smith, Jr. and Stanley Hix, Plaintiffs, v. Anderson County Planning Commission and Spano & Associates, Inc., Defendants.	))))))))))))))	IN THE COURT OF COMMON PLEAS IN THE 10TH CIRCUIT CASE NO: 2025-CP-04-00328 **PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF APPEAL FROM ANDERSON COUNTY PLANNING COMMISSION**

NOW COME the Plaintiffs, by the undersigned attorney, and submit this Memorandum of Law in support of their appeal of the decision from the Anderson County Planning Commission ("Commission") dated January 14, 2025. Plaintiffs would show to the Court:

PARTIES AND JURISDICTION

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

Plaintiffs Hubert N. Smith, Jr., and Stanley Hix are taxpayers and nearby land-owners. They are some of the one hundred fifty-two (152) property owners within the 2000-foot radius of the proposed subdivision (the "Property").

This Court has jurisdiction pursuant to the South Carolina Constitution, S.C. Code Ann. § 6-29-1150, *et seq*., the South Carolina Uniform Declaratory Judgment Act, § 15-53-10 *et seq*, and the South Carolina Rules of Civil Procedure.

Plaintiffs possess standing to appeal the decision of the Commission, as adjacent property owners affected by the decision, pursuant to *Citizens for Quality Rural Living, Inc. v. Greenville*

County Planning Commission and RMDC, Inc., 426 S.C. 97, 825 S.E.2d 721 (Ct. App. 2019). Plaintiffs also possess standing under the following decisions, which address public interest standing and taxpayer standing: *South Carolina Public Interest Foundation v. Wilson,* 437 S.C. 334, 878 S.E.2d 891 (2022); *Adams v. McMaster*, 432 S.C. 225, 851 S.E.2d 703 (2020); *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017). This action raises issues of great public importance, namely the unlawful actions of public officials, and the proper, legal treatment of burial grounds. In addition to being adjacent landowners affected by the Decision of the Defendant, Plaintiffs also ask the Court to grant Plaintiffs standing based upon the great public importance of the issues this action raises.

BACKGROUND AND CONTEXT

The Commission approved Phase 1 of Anderson Reserve, in May 2023. The developer forecast that the new subdivision would comprise 71.52 acres and be bordered by Fants Grove Circle and Highway 187 in Anderson County. The developer proposed 150 residential lots on the Property. Phase I is 150 houses, and Phase II is 232 houses.

In December 2023, the Plaintiffs notified the Commission that slave graves were on the Property. The Commission voted down the project by a vote of 5 to 1. On January 2, 2024, the developer appealed to the Circuit Court, case number 2024CP0400006 and requested mediation. After mediation on April 9, 2024, the developer dismissed its appeal on April 12, 2024.

In March 2024, the Commission voted down the project by a vote of 3 to 4. On April 9, 2024, the developer sought approval of both Phases 1 and 2. The developer made a new preliminary subdivision called Anderson Reserve Subdivision 1 and 2. The plan passed. Plaintiffs appealed the Decision to this Court.

Plaintiffs 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 on the Property that the developer had not addressed. The Commission failed to deal with the issue of the slave graves.

This Court reversed the Commission's decision for failure to deal with slave graves. Order dated August 30, 2024. The Court ruled that the Commission's preliminary approval of Phase I & II of Anderson Reserve was arbitrary and capricious and an abuse of discretion.

On September 9, 2024, the Commission filed a Motion to Alter or Amend. Unbeknownst to the Commission, after the Appellants had filed the appeal, the developer "voluntarily" secured a contractor to conduct a site visit and make a report concerning the possible slave graves. However, the contractor searching in the soil, Reed Tech, is a utility company, and usually simply searches for utility placements and disturbed soil; it is not properly trained to perform ground penetrating radar to detect burial shafts. Nevertheless, the SM&E 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 ground disturbing and construction activities." Report, page 3.

In October 2024, the 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. Further study could indicate more graves.

On October 25, 2024, the Court held a conference call with the parties and counsel for the developer, Spano and Associates, Inc. The developer confirmed that it had issued a "no trespass"

notice to the Appellants. The Court orally denied the Defendant's Motion to Alter or Amend and remanded the case to the Commission.

On October 28, 2024, the developer 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 oral ruling issued October 25, 2024.

On December 7, 2024, the developer submitted a second report from S&ME to the Commission. The developer experts again found no graves.

The plaintiffs' team was only ones who found graves. On December 9, 2024, the Appellants wrote to the Commission, with exhibits from their experts, showing graves of enslaved persons at one additional location on Rivoli Plantation, probably "Graveyard Hill," referenced in the S&ME report. These graves are documented in two reports. Ground penetrating radar confirms they are burial shafts. Both plaintiffs' experts also recommended a **full search** of the **entire** Rivoli Plantation.

Upon receipt of the plaintiffs' letter and exhibits, the Commission deferred the hearing on this project scheduled for December 11, 2024, and reconvened on January 14, 2025, to consider the status of the project, and the Order of remand.

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. (Exhibit 6 to the Developer's Prehearing Brief). S&ME 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**

[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.

> **environmentally sensitive area,** and no staging of materials or parking of equipment or vehicle should occur within the cemetery or the buffer.

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

DECISION AT ISSUE ON THIS APPEAL

On January 14, 2025, the Commission, met in **executive session**, apparently in discussions with the Commission counsel. Then the Commission returned to the public meeting, proposed 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. (*See* Exhibit 5 to the Developer's prehearing brief.) The motion does not appear to mention the supplemental report of the developer's experts. Despite the Commission's contention that it was taking into consideration plaintiffs' findings, they did not vote to act on them.

The Commission made a second motion:

> I make a motion that we reaffirmed 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 approve the old map** dated March 21, 2024, that showed the graves being developed 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.

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. The Commission failed to make publicly available the Appellants' letter and exhibits, confirming the presence of slave graves, as referenced in the motion.

The Commission approved the wrong drawing; they approved the drawing dated March 21, 2024, and not the developer's new drawing from December 2024. *See* the affidavit of Stanley Hix attached hereto **(Exhibit 1)**.

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*).

Developer's Brief and Exhibits

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 on which the Commission voted. In fact, although it is hard to read, and it needs to be enlarged significantly, the map that is Exhibit 4 is dated **April 21, 2025**. The developer represents that Exhibit 4 is the latest version of the map of Anderson Reserve. 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 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 **lot numbers are completely different** on Exhibit 7. The total number of lots is also different. Accordingly, the Planning Commission has not adopted, or even voted on Exhibit 4, **dated April 11, 2025**, that the developer represents as the latest version of the map of Anderson Reserve.

By voting to approve the wrong map, the Commission **has not required** 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** on the former Rivoli Plantation, either before or after either of the reports submitted by the developer, or the letter and exhibits submitted 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.

PROTECTION OF BURIAL GROUNDS

South Carolina law prohibits the destruction 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). 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 failed to require compliance with the statutory prerequisites for dealing with graves and burial sites.

REVIEW BY THIS COURT

Generally, the Court's authority on these appeals 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*).

ANDERSON COUNTY CODE

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. The Commission **has not approved an updated plat** from December 2024 or January 2025 for Anderson Reserve I and II. 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. 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 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, developer did not submit his revised plan to the "subdivision administrator."

The "subdivision administrator" is required to determine whether "the information provided on the plat fulfills the requirements of section 24-336." § 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 approved the plat or that the Planning Commission reject the plat and indicating the **reasons for said recommendation** in 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*). The Commission did not fulfill this important step in the process. 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. If the approval is not overturned, there is no guarantee that all the rules will be followed during any changes to the map.

For purposes of this case, one of the important things required by section 24-336 is "(18) For conservation subdivisions: Clear delineation of open space on plat." It is important that the plat clearly delineate open space, which includes the burial grounds and Graveyard Hill. Moving

those lots into open space, and using open space to replace them is a major change. Depending on how they do it, it would affect density. Buffers need to be rechecked, open space acreage needs to be checked, and views to open space as a percentage of lots needs to be rechecked.

The Commission voted to approve 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. *See* the Affidavit of Stanley Hix. **(Exhibit 1)**

The **map** that this proposed subdivision **that the Commission adopted** 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*). *See* the attached overlay showing Graveyard Hill as part of several lots and a street. **(Exhibit 4)**

There is **nothing** in the plat that the Commission approved that requires **the developer to erect fences** around, or cordon off, any of the area on "Graveyard Hill" containing slave graves. By adopting the old plat, 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. The Commission **failed to require** the developer to confirm that the burial grounds on **Graveyard Hill will be preserved**.

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 failed 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. 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 approval 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. **(Exhibit 4)**

The Anderson County Code § 24-367 holds that if the developer doesn't get final approval within one year, the preliminary plat is null and void, and he must start all over again.

> 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.

§ 24-367(a) (*emphasis added*).

Again, the map the developer now contends is the latest rendering of Anderson Reserve is a map by a different company, and it contains a different number of lots, and contains different configuration. This is the kind of major change that needs to be approved by the subdivision administrator for compliance with all 18 provisions of § 24-336, and also needs to be approved by the Commission itself.

CONCLUSION

The Commission approved the old map dated March 21, 2024, the does not require protections for Graveyard Hill. The Commission's adoption of the January 14, 2025, motion violated state and local law. Accordingly, 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 Decision, the Plaintiffs will be immediately and irreparably impaired by the Decision and Defendant's unlawful violations.

WHEREFORE, Plaintiffs pray the Court for the following:

1. That the Court rule that the adoption of the foregoing motion on January 14, 2025, was unlawful, arbitrary and capricious, and an abuse of discretion;
2. That the Court ruled that the approval of the old map is contrary to law and an abuse of discretion;
3. That the Court reverse the Commission's Decision for failure to comply with the law and ordinances, as shown herein;
4. That the Court grant Plaintiffs their costs and attorneys' fees of this action, pursuant to S.C. Code Ann. § 15-77-300 and Rule 54 SCRCP; and
5. For such other and further relief as the court deems just and proper.

Respectfully submitted,

THE CARPENTER LAW FIRM, PC

s/ *James G. Carpenter*
S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
(864) 235-1269
jim@carpenterlawfirm.net
Attorney for the Plaintiffs

June 3, 2025

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Hubert N. Smith, Jr. and Stanley Hix, Plaintiffs, v. Anderson County Planning Commission and Spano & Associates, Inc., Defendants.	)	IN THE COURT OF COMMON PLEAS IN THE 10TH CIRCUIT **CASE NO: 2025-CP-04-00328** **Affidavit of Stanley Hix**

Stanley Hix, being first duly sworn on oath, deposes and states as follows:

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**.

The Planning Commission failed to seek and obtain a review by the subdivision administrator.

6. Pursuant to chapter 24 of the Anderson County Code, a new subdivision map goes to the planning staff to make sure it complies with all the land use rules for Conservation Subdivisions. The Code requires that an before the Planning Commission reviews the plat, "the subdivision administrator shall review the plat." Anderson County Code § 24-335 (2). The developer should have archaeological and historical sites in open space according to Chapter 24-401 section 7.

7. The subdivision administrator works to make sure all Chapter 24 rules have been followed. Section 24-336 has **18 separate paragraphs** that subdivisions must meet for approval by the Planning Commission. The "subdivision administrator" is required to determine whether "the information provided on the plat" complies with the "requirements set forth in section 24-336." If not, the "subdivision administrator" rejects the plat.

8. One of the factors that the subdivision administrator would check is whether the open space acreage meets or exceeds requirements of Chapter 24 of the Anderson County Code. The developer may move archaeological and historical sites into open space. Also, the developer may create additional lots to make up that space.

9. The Commissioners usually take the word of the subdivision administrator on whether the proposed subdivision complies with the requirements of chapter 24.

10. Upon information and belief, the developer's new map was not given to the subdivision administrator so that the subdivision administrator could confirm whether the new map complied with all of the requirements of Section 24-336.

11. Instead, counsel for the County met in Executive Session with the Planning Commission and made a presentation concerning possible gravesites in Anderson Reserve.

Graveyard Hill is slated for desecration.

12. On the map that was approved, the map dated March 21, 2024, the acreage encompassing "Graveyard Hill" shows that the graves are in line for development, for several building lots, and portions of streets; specifically, lots 107-111, and lots 117-121 and the road Spanish Oak Court **will level "Graveyard Hill" where 14 or more graves were found,** in violation of S.C. Code Ann. § 16-17-600. Accordingly, the Planning Commission did **not** vote to move Graveyard Hill into open space, or to preserve and protect it in any way.

Trucks and heavy equipment are coming.

13. I have observed trucks and heavy equipment moving onto Anderson Reserve, cutting and widening roads to make access for more construction and equipment.

14. Since the Planning Commission approved the same map that they had approved a year ago, the Planning Commission staff did not assure compliance with Chapter 24, after they knew about the graves on Graveyard Hill. Accordingly, **the Court should overrule** the approval of the Planning Commission, and send it back to **start over**, for failure to comply with Chapter 24, and failure to comply with state law regarding the protection of burial grounds, S.C. Code Ann. § 16-17-600.

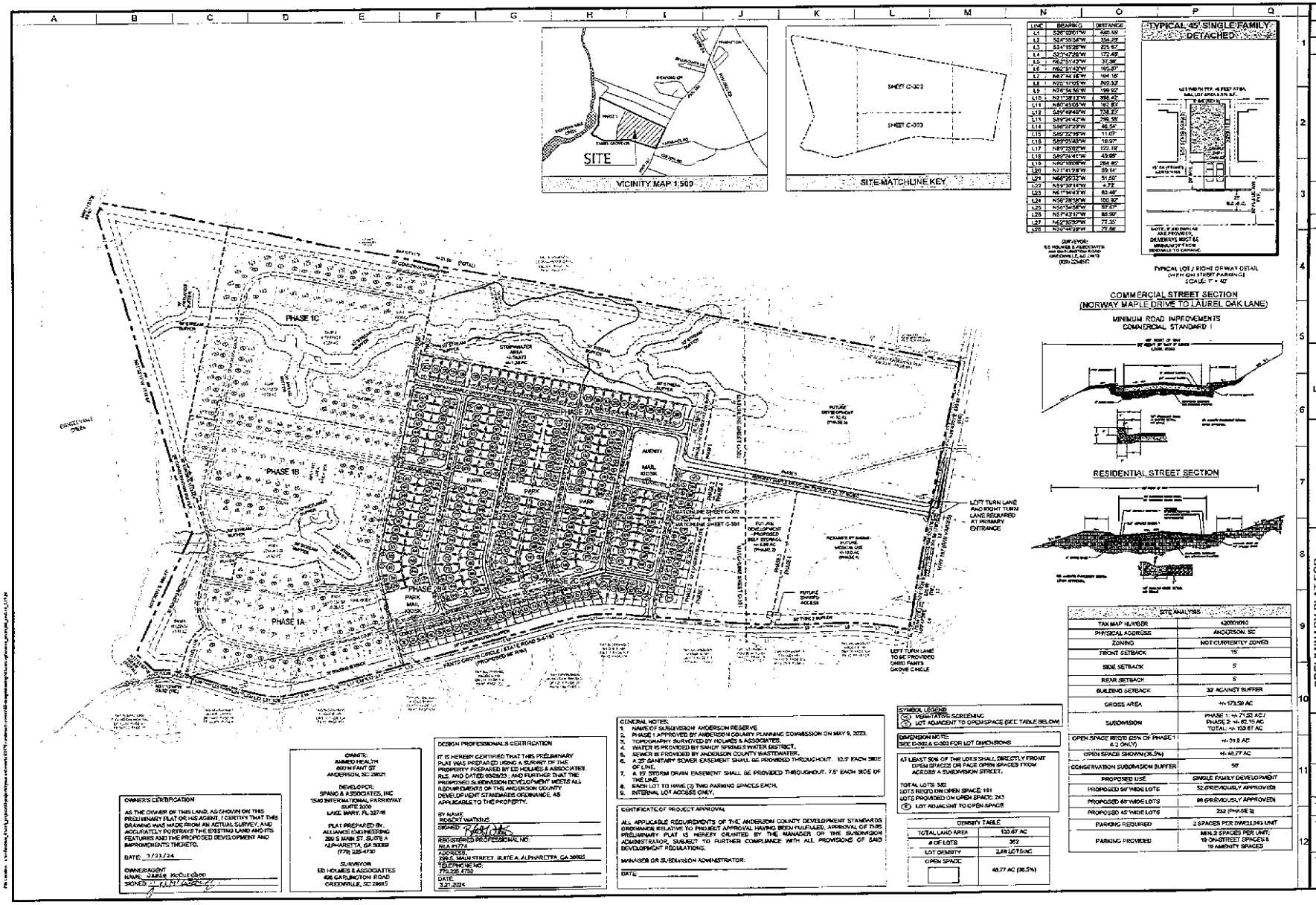
Further the affiant saith naught.

Stanley Hix

Subscribed and sworn to before me
This 2 day of June, 2025

Notary Public, State of South Carolina
My commission expires _____

LISA M. BURDETTE
Notary Public-State of South Carolina
My Commission Expires
April 30, 2031



LINE	BEARING	DISTANCE
L1	S26°03'01"W	680.59
L2	S24°55'34"W	354.29
L3	S34°10'28"W	225.62
L4	S23°47'26"W	172.48
L5	N62°51'43"W	37.96
L6	N62°51'43"W	165.87
L7	N67°44'18"W	104.18
L8	N70°17'01"W	202.32
L9	N74°54'56"W	199.92
L10	N71°38'13"W	398.42
L11	N80°45'06"W	162.83
L12	S49°49'46"W	138.23
L13	S49°24'42"W	298.58
L14	S49°27'20"W	46.54
L15	S49°32'18"W	11.07
L16	S49°35'45"W	19.97
L17	N89°35'06"W	122.19
L18	S49°24'41"W	49.99
L19	N50°18'08"W	264.80
L20	N71°41'18"W	59.14
L21	N68°26'32"W	51.50
L22	N59°38'14"W	4.72
L23	N61°14'43"W	63.46
L24	N50°28'58"W	100.92
L25	N50°34'58"W	97.67
L26	N57°43'17"W	88.92
L27	N62°35'37"W	77.35
L28	N70°46'28"W	77.86

SITE ANALYSIS	
TAX MAP NUMBER	42000101G
PHYSICAL ADDRESS	ANDERSON, SC
ZONING	NOT CURRENTLY ZONED
FRONT SETBACK	15'
SIDE SETBACK	5'
REAR SETBACK	5'
BUILDING SETBACK	30' AGAINST BUFFER
GROSS AREA	+/- 173.59 AC
SUBDIVISION	PHASE 1: +/- 71.52 AC / PHASE 2: +/- 62.15 AC TOTAL: +/- 133.67 AC
OPEN SPACE REQ'D (25% OF PHASE 1 & 2 ONLY)	+/- 31.9 AC
OPEN SPACE SHOWN (36.2%)	+/- 46.27 AC
CONSERVATION SUBDIVISION BUFFER	50'
PROPOSED USE	SINGLE FAMILY DEVELOPMENT
PROPOSED 50' WIDE LOTS	52 (PREVIOUSLY APPROVED)
PROPOSED 60' WIDE LOTS	98 (PREVIOUSLY APPROVED)
PROPOSED 45' WIDE LOTS	202 (PHASE 2)
PARKING REQUIRED	2 SPACES PER DWELLING UNIT
PARKING PROVIDED	MIN 2 SPACES PER UNIT, 19 ON-STREET SPACES & 19 AMENITY SPACES

SYMBOL LEGEND
(V) VEGETATIVE SCREENING
(S) LOT ADJACENT TO OPEN SPACE (SEE TABLE BELOW)

DIMENSION NOTE:
SEE PANEL C-303 FOR LOT DIMENSIONS

AT LEAST 50% OF THE LOTS SHALL DIRECTLY FRONT OPEN SPACES OR FACE OPEN SPACES FROM ACROSS A SUBDIVISION STREET.

TOTAL LOTS: 352
LOTS REQ'D ON OPEN SPACE: 181
LOTS PROVIDED ON OPEN SPACE: 243
(S) LOT ADJACENT TO OPEN SPACE

DENSITY TABLE	
TOTAL LAND AREA	133.67 AC
# OF LOTS	352
LOT DENSITY	2.63 LOTS/AC
OPEN SPACE	46.27 AC (36.5%)

GENERAL NOTES:
1. NAME OF SUBDIVISION: ANDERSON RESERVE
2. PHASE 1 APPROVED BY ANDERSON COUNTY PLANNING COMMISSION ON MAY 9, 2023.
3. TOPOGRAPHY SURVEYED BY HOLMES & ASSOCIATES.
4. WATER IS PROVIDED BY SANDY SPRINGS WATER DISTRICT.
5. SEWER IS PROVIDED BY ANDERSON COUNTY WASTEWATER.
6. A 25' SANITARY SEWER EASEMENT SHALL BE PROVIDED THROUGHOUT. 12.5' EACH SIDE OF LINE.
7. A 15' STORM DRAIN EASEMENT SHALL BE PROVIDED THROUGHOUT. 7.5' EACH SIDE OF THE LINE.
8. EACH LOT TO HAVE (2) TWO PARKING SPACES EACH.
9. INTERNAL LOT ACCESS ONLY.

CERTIFICATE OF PROJECT APPROVAL

ALL APPLICABLE REQUIREMENTS OF THE ANDERSON COUNTY DEVELOPMENT STANDARDS ORDINANCE RELATIVE TO PROJECT APPROVAL HAVING BEEN FULFILLED, APPROVAL OF THIS PRELIMINARY PLAT IS HEREBY GRANTED BY THE MANAGER OR THE SUBDIVISION ADMINISTRATOR, SUBJECT TO FURTHER COMPLIANCE WITH ALL PROVISIONS OF SAID DEVELOPMENT REGULATIONS.

MANAGER OR SUBDIVISION ADMINISTRATOR: _____

DATE: _____

OWNER'S CERTIFICATION

AS THE OWNER OF THIS LAND, AS SHOWN ON THIS PRELIMINARY PLAT OR HIS AGENT, I CERTIFY THAT THIS DRAWING WAS MADE FROM AN ACTUAL SURVEY, AND ACCURATELY PORTRAYS THE EXISTING LAND AND ITS FEATURES AND THE PROPOSED DEVELOPMENT AND IMPROVEMENTS THERETO.

DATE: 3/22/24

OWNER/AGENT
NAME: Justin McCullough
SIGNED: _____

OWNER:
AMMED HEALTH
6074 PAINT ST
ANDERSON, SC 29621

DEVELOPER:
SPANO & ASSOCIATES, INC
1540 INTERNATIONAL PARKWAY
SUITE 2000
LAKE MARY, FL 32746

PLAT PREPARED BY:
ALLIANCE ENGINEERING
220 S. MAIN ST, SUITE A
ALPHARETTA, GA 30009
(770) 225-4730

SURVEYOR
ED HOLMES & ASSOCIATES
496 CARLINGTON ROAD
GREENVILLE, SC 29615

DESIGN PROFESSIONAL'S CERTIFICATION

IT IS HEREBY CERTIFIED THAT THIS PRELIMINARY PLAT WAS PREPARED USING A SURVEY OF THE PROPERTY PREPARED BY ED HOLMES & ASSOCIATES, RLS, AND DATED 05/20/23, AND FURTHER THAT THE PROPOSED SUBDIVISION DEVELOPMENT MEETS ALL REQUIREMENTS OF THE ANDERSON COUNTY DEVELOPMENT STANDARDS ORDINANCE, AS APPLICABLE TO THE PROPERTY.

BY NAME: ROBERT WATKINS
SIGNED: _____
REGISTERED PROFESSIONAL NO: RLA #1774
ADDRESS: 220 S. MAIN STREET, SUITE A, ALPHARETTA, GA 30009
TELEPHONE NO: 770.225.4730
DATE: 3.21.2024

LJA ENGINEERING
220 S. MAIN STREET
ALPHARETTA, GA 30009
770-225-4730

SPANO & ASSOCIATES
1540 INTERNATIONAL PARKWAY
SUITE 2000
LAKE MARY, FL 32746

NOT RELEASED FOR CONSTRUCTION

PRELIMINARY PLAT FOR:
ANDERSON RESERVE
PHASE 1 & 2

ANDERSON, SC
TAX PARCEL: 42000101G

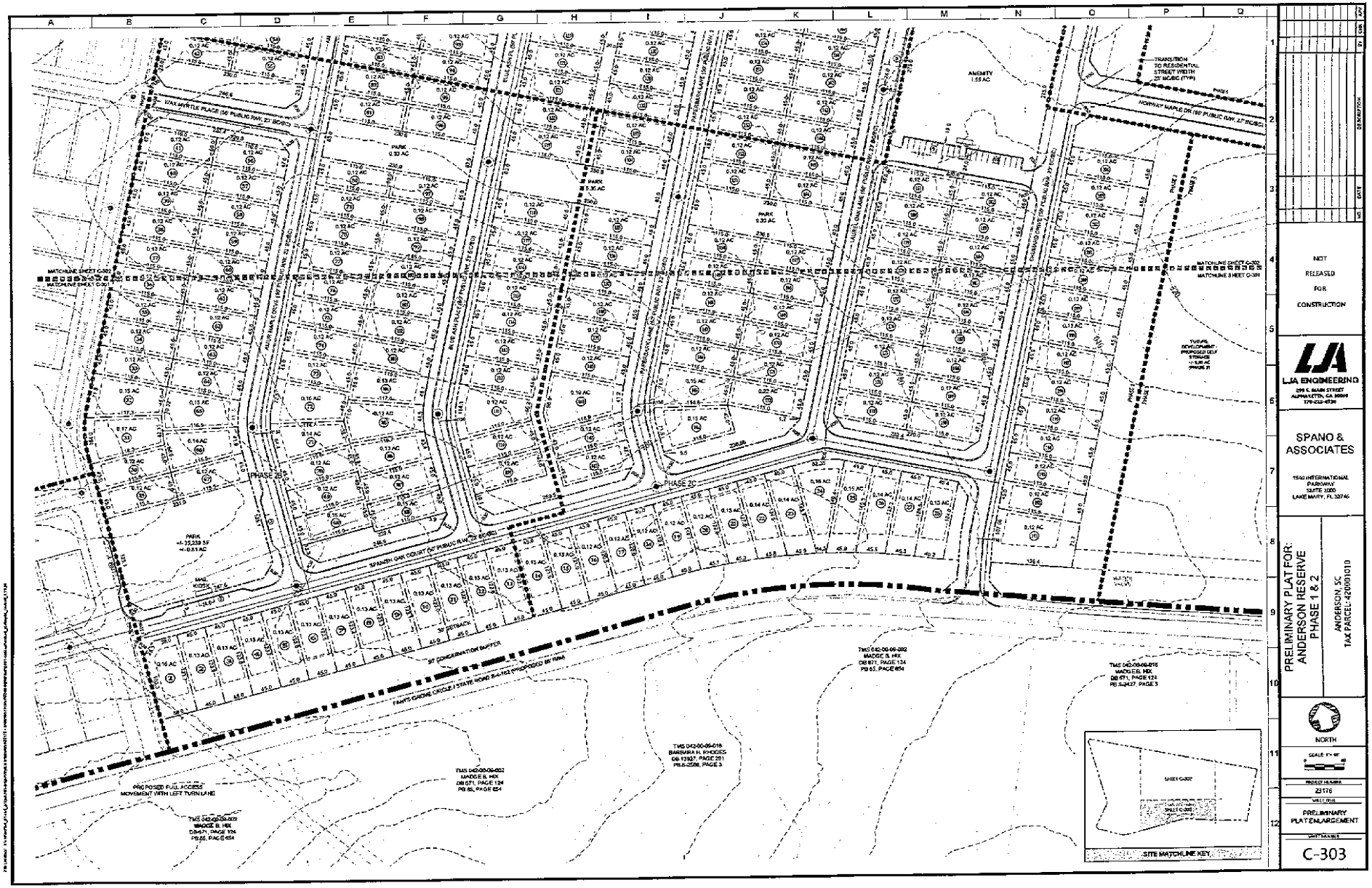
NORTH

SCALE: 1" = 200'

PROJECT NUMBER
23176

SHEET TITLE
PRELIMINARY PLAT

SHEET NUMBER
C-301


NOT RELEASED FOR CONSTRUCTION
LJA ENGINEERING
SPANO & ASSOCIATES
PRELIMINARY PLAT FOR: ANDERSON RESERVE PHASE 1 & 2
ANDERSON, SC
TAX PARCEL: 4200010101
NORTH
PRELIMINARY PLAT ENLARGEMENT
C-303
SITE MATCHLINE KEY
AMENITY 1.55 AC
PHASE 2C
PHASE 2B
PARK 0.30 AC
SPANISH OAK COURT (50' PUBLIC R/W, 27' BC/BC)
30' SETBACK
30' CONSERVATION BUFFER
PROPOSED FULL ACCESS MOVEMENT WITH LEFT TURN LANE
TRANSITION TO RESIDENTIAL STREET WIDTH 25' BC/BC (TYP)
NORWAY MAPLE DR (50' PUBLIC R/W, 27' BC/BC)
VAX MYRTLE PLACE (50' PUBLIC R/W, 27' BC/BC)
MATCHLINE SHEET C-302
MATCHLINE SHEET C-301
TMS 042-00-09-002 MADGE B. HIX DB 671, PAGE 124 PB 65, PAGE 654
TMS 042-00-09-016 BARBARA H. KHODES DB 10927, PAGE 201 PB 65-2506, PAGE 3
TMS 042-00-09-015 MADGE B. HIX DB 671, PAGE 124 PB 5-2427, PAGE 3

Sec. 24-335. - Review procedure; recommendations; approval.

Prior to making any physical improvements on the potential subdivision site, the subdivider shall create a preliminary plat containing the information required by section 24-336 and submit said plat for approval by the planning commission in the following manner:

(1) Two copies of the complete preliminary plat shall be turned in to the planning department at least 14 working days, but not greater than 20 days, prior to any planning commission meeting at which the subdivider would like the plat to be discussed. Additional copies of the preliminary plat should be provided to the planning department upon request.

(2) Prior to review of the preliminary plat by the planning commission, the subdivision administrator shall review the plat.

a. Should the subdivision administrator determine that the information provided on the plat is not in conformance with the requirements set forth in section 24-336, the subdivision administrator shall reject the plat. Notice of such rejection, as well as a list of all missing or incorrect information, shall be conveyed to the subdivider in writing and recorded, along with the date of notification to the subdivider, in the minutes of the first planning commission meeting after said notification. The subdivider may then submit a corrected preliminary plat, which shall be considered in the same manner as a newly submitted preliminary plat.

b. 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. The written recommendation of the subdivision administrator shall be recorded in the minutes of said planning commission meeting.

(3) At the planning commission meeting during which the plat is scheduled to be discussed, the subdivision administrator shall present his recommendation to the planning commission. The 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.

a. If the planning commission votes to reject the plat, it shall make its grounds for such rejection known for the public record, and shall notify the subdivider of such rejection, including the grounds for rejection, in writing. The subdivider may then submit a

corrected preliminary plat, which will be considered in the same manner as a newly submitted preliminary plat.

b. If the subdivider submits a corrected preliminary plat as provided in subsection a. above and it is rejected by the planning commission, no further preliminary plats may be submitted within the next 90 days.

c. If the planning commission votes to approve the preliminary plat, such approval shall be noted and certified by the subdivision administrator. The date of the planning commission's action shall also be recorded on the plat. The subdivider shall be notified of the planning commission's approval within ten working days of the vote to approve the plat.

d. In addition to the standards set forth in this article and the recommendations of staff, the planning commission will also take into consideration the following criteria when making its decision to reject or approve a preliminary subdivision plat:

1. Public health, safety, convenience, prosperity, and the general welfare.
2. Balancing the interests of subdividers, homeowners, and the public.
3. The effects of the proposed development on the local tax base.
4. The ability of existing or planned infrastructure and transportation systems to serve the proposed development.

(4) Within ten days after receiving notice of approval, the subdivider shall provide 15 copies of the approved preliminary plat to the planning staff.

(5) 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 managements 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.

(Code 2000, § 38-311; Ord. No. 03-007, § 1, 4-15-2003; Ord. No. 2018-049, §§ 1, 2, 12-4-2018; Ord. No. 2021-036, § 1, 8-17-2021; Ord. No. 2022-004, § 1, 4-19-2022; Ord. No. 2022-022, § 1, 6-29-2022)

Sec. 24-336. - Preliminary plat.

The preliminary plat shall contain the following information:

(1) Location of subdivision on a map indicating surrounding areas at an appropriate scale sufficient to locate the subdivision.

(2) Map of development at a scale of not less than one inch equals 200 feet and not more than one inch equals 50 feet.

(3) Name of subdivision, name and address of the owner(s), name of engineer or surveyor and the names of the owners of abutting properties.

(4) A boundary survey of the area to be subdivided, showing bearings measured in degrees, minutes and seconds and distances measured in feet and decimals thereof.

(5) Present use of land to be subdivided and of the abutting property and/or properties.

(6) Acreage of land to be subdivided.

(7) Contour maps of the proposed subdivision, with maximum contour intervals of ten feet or three meters.

(8) Tax map number of original parcel or parcels prior to subdivision.

(9) Location of existing and proposed easements with their location, widths and distances.

(10) Location of existing watercourses, culverts, railroads, roads, bridges, dams, and other similar structures or features.

(11) Location of utilities and utility easements on and adjacent to the tract, showing proposed connections to existing utility systems.

(12) Proposed lot lines, lot numbers, lot dimensions and lot acreages.

(13) North arrow.

(14) Proposed road names pre-approved by E 911 addressing office for the county.

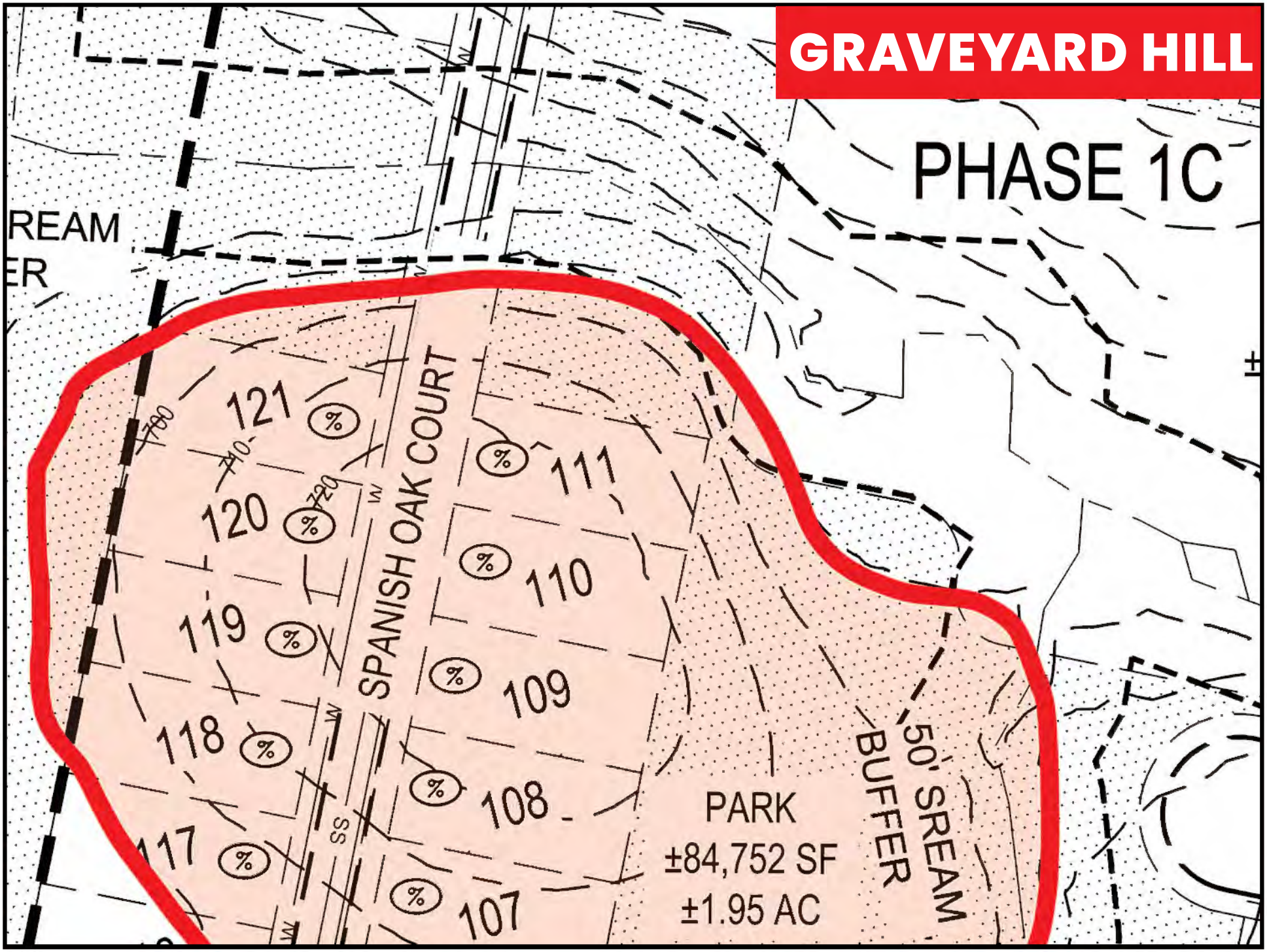
(15) Certification by licensed surveyor stating that all lot sizes meet minimum size standards.

(16) Designation of any areas that fall within any floodplain indicating the high water mark for same.

(17) For conservation subdivisions: Density table showing the total land area (acres), number of lots total, number of lots per acre, open space (acres and percent of total).

(18) For conservation subdivisions: Clear delineation of open space on plat.

(Code 2000, § 38-312; Ord. No. 03-007, § 1, 4-15-2003; Ord. No. 2020-035 , § 1(Exh. A), 9-7-2021)


GRAVEYARD HILL
PHASE 1C
REAM
ER
SPANISH OAK COURT
121
120
119
118
117
111
110
109
108
107
700
710
720
PARK
±84,752 SF
±1.95 AC
50' SREAM
BUFFER

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:

(1)To preserve open land, including those areas containing unique and sensitive features such as natural areas and wildlife habitats, streams, wetlands, and floodplains.

(2)To preserve scenic views and elements of the county's rural character and to minimize perceived density by minimizing views of new development from existing roads.

(3)To minimize site disturbance and erosion through retention of existing vegetation.

(4)To provide for the active and passive recreational needs of the residents of the proposed subdivision.

(5)To provide greater efficiency in the siting of services and infrastructure by reducing road length, utility runs, and the amount of paving for development

(6)To encourage the maintenance and enhancement of habitat for various forms of wildlife and to create new woodlands through natural succession and reforestation where appropriate.

(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.

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Hubert N. Smith, Jr. and Stanley Hix, Plaintiffs, v. Anderson County Planning Commission and Spano & Associates, Inc., Defendants.	))))))))))))))	IN THE COURT OF COMMON PLEAS IN THE 10TH CIRCUIT CASE NO: 2025-CP-04-00328 **PLAINTIFFS' MOTION TO ALTER OR AMEND**

NOW COME the Plaintiffs, by their undersigned attorney, and move the Court to Alter or Amend the Order issued June 10, 2025. Plaintiffs would show to the Court:

Plaintiffs appealed the decision of the Defendant Anderson County Planning Commission issued January 14, 2025. The parties appeared before the Court June 4, 2025. The Court denied the appeal and asked attorneys for Spano and Associates, Inc. to prepare a formal order. On June 5, 2025, the Court issued a Form 4 Order, denying the appeal.

On June 9, 2025, counsel for Spano and Associates, Inc. submitted a proposed order to the Court, without submitting it to the Plaintiffs beforehand, as is customary.

The next day, June 10, 2025, the Court signed and filed the Order, as submitted by counsel for Spano and Associates, Inc.

Plaintiffs respectfully suggest that the Order, proposed by opposing counsel, contains several personal and petty remarks, not befitting an Order of this Court. Accordingly, Plaintiffs move the Court to Alter or Amend the Order, omitting the following remarks:

1. Page 1, footnote 1, Plaintiffs ask the Court to delete following sentence: "Despite telling the Court that they planned 'to appeal this decision,' *Appellants never did so.* (*See* hearing transcript, Feb. 6, 2025, at 15:22-24 (emphasis added)." When Plaintiffs' counsel made the statement, the Court and the parties had just been discussing the

January 14, 2025, meeting and decision of the Planning Commission issued on January 14, 2025. **<u>That</u>** was the decision that Plaintiffs were planning to appeal, and they did so: the current appeal. Accordingly, this remark should be removed from the Order.

2. Page 4, in the third paragraph, the word "allegedly" should be removed. Plaintiffs submitted an affidavit from Plaintiff Stanley Hix affirming that he had issued a FOIA request for a copy of the current map, and in response, received the April, 2024, map from the Planning Commission. No affidavit was filed that contravenes the affidavit of Mr. Hix. Accordingly, word "allegedly" should be removed.
3. Page 5, the end of the first partial paragraph, words "misleading and" should be removed. There is nothing misleading about the Plaintiffs' contention, which was supported by exhibits and an unopposed affidavit. Further, a court will not ordinarily call an argument submitted by counsel "misleading."
4. Page 6, the last sentence before the Conclusion reads, "Given the circumstances, the Second Appeal appears to have been filed primarily to delay the rights of a property owner who has exceeded legal requirements in addressing the matter." Ordinarily, judges and courts do not use Court orders to question the motives of the parties. This comment is gratuitous, petty, and non-judicial. Accordingly, Plaintiffs ask that it be removed.

WHEREFORE, Plaintiffs pray the Court to alter or amend the Order entered June 10, 2024, as set out in the four numbered paragraphs above, and for such other and further relief as the Court deems just and proper.

Upon request, Plaintiffs would be happy to submit a revised version of the Order.

Respectfully submitted,

THE CARPENTER LAW FIRM, PC

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Attorney for the Plaintiffs

June 16, 2025

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Hubert N. Smith, Jr. and Stanley Hix, *Plaintiffs/Appellants*, v. Anderson County Planning Commission and Spano & Associates, Inc., *Defendants/Respondents*.	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT Civil Action No. 2025-CP-04-00328 **SPANO & ASSOCIATES, INC.'S MOTION FOR EXPEDITED HEARING AND MOTION TO LIFT AUTOMATIC STAY AND ORDER APPELLANTS TO POST SUFFICIENT BOND DURING THE PENDENCY OF THEIR APPEAL**

INTRODUCTION

Respondent Spano & Associates, Inc. ("Spano")[1] continues to suffer irreparable harm due to the persistent and unjustified efforts of Appellants Hubert N. Smith and Stanley Hix (collectively, "Appellants") to obstruct the development of the Anderson Reserve neighborhood. As detailed in the affidavit of Andrew Auld (**Exhibit 1**), Appellants' actions have caused ongoing disruption and damage.

[1] Filed contemporaneously with this Motion, is Spano & Associates, Inc.'s Motion to Correct the Record under Rule 60(a), SCRCP, wherein Defendants Spano & Associates, Inc. requests leave to (1) correct the record to reflect that Spano & Associates Asheville, LLC—not Spano & Associates, Inc.—is the owner of the real property underlying the following actions: *Hubert N. Smith Jr. and Stanley Hix v. Anderson Cnty. Planning Comm'n*, No. 2024-CP-04-00975 and *Hubert N. Smith Jr. and Stanley Hix v. Anderson Cnty. Planning Comm'n and Spano & Associates, Inc.*, No. 2025-CP-04-00328; and (2) permitting the captions on any future filings in such actions to properly identify Spano & Associates Asheville, LLC as the owner of the Property. *See* Rule 60(a), SCRCP (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) (emphasis added).

Permitting Appellants to pursue a *third appeal* of the Anderson Reserve subdivision approval—without requiring a sufficient bond—would reward Appellants by allowing them to effectively circumvent this Court's prior rulings, which stated:

- "[Spano] did what they were supposed to do, and that's it . . . They've done it. And so I'm dismissing your appeal based on the fact that they've done what they were supposed to do." *Hubert N. Smith Jr. and Stanley Hix v. Anderson Cnty. Planning Comm'n*, No. 2024-CP-04-00975, at 17:4-17 (Anderson Cnty. Com. Pl. Feb. 21, 2025) ("First Appeal").

- "Spano has exceeded [the] legal requirements in addressing this matter." *Hubert N. Smith Jr. and Stanley Hix v. Anderson Cnty. Planning Comm'n and Spano & Associates, Inc.*, No. 2025-CP-04-00328, at *6 (Anderson Cnty. Com. Pl. June 30, 2025) ("Second Appeal").[2]

Accordingly, Spano respectfully requests that this Honorable Court exercise its authority under Rule 241, SCACR, to lift the automatic stay and require Appellants to post a sufficient bond during the pendency of their third appeal. In support of this motion, Spano states the following.

Further, Pursuant to § 6-29-1150(d)(4) of the Code of Laws, Spano requests an expedited hearing on this Motion concerning this appeal. That statute provides, in part, that "A judge, upon request by any party, may in his discretion give the appeal precedence over other civil cases." Spano requests this relief in the Court's discretion. Further, an expedited hearing is necessary because Spano continues to suffer and will suffer irreparable harm, as Appellants' third appeal (detailed below) presents no credible basis for reversal and carries an exceptionally high likelihood of failure. Its mere existence, however, is costing Spano extraordinary financial cost and depriving it of the opportunity to use its land.

[2] At the June 30, 2024 hearing in the Second Appeal, the Court remarked regarding Appellants' continuing efforts to delay the development of the Anderson Reserve neighborhood, or words to that effect. Spano reserves the right to supplement this motion once it has received the transcript from this hearing.

BACKGROUND

The Anderson County Planning Commission ("Commission") initially approved the preliminary plat for Anderson Reserve on April 9, 2024 ("April 2024 Decision"). Over a year later, this Court dismissed the appeal challenging that decision—"**with finality**." *See Hubert N. Smith Jr. and Stanley Hix v. Anderson Cnty. Planning Comm'n*, No. 20224-CP-04-00975, at *4 (Anderson Cnty. Com. Pl. Feb. 21, 2025) (emphasis added).

Refusing to accept this Court's ruling, Appellants filed the Second Appeal, regurgitating many of the same arguments that this Court rejected in the First Appeal. This time, they also contested the Commission's January 14, 2025 decisions (collectively, "January 2025 Decision"). *Id.*, at *2. Unsurprisingly, this Court also dismissed the Second Appeal. *Id.*, at *6.

Undeterred by two clear judicial rejections, Appellants have initiated a *third appeal*—this time to the South Carolina Court of Appeals—continuing to misuse the appellate system for delay's sake ("Third Appeal"). *See* Notice of Appeal (**Exhibit 2**).

SUMMARY OF ARGUMENT

Appellants' Motion should be granted for the following reasons:

1. This Court has jurisdiction to enter an order under Rule 241(d)(1), SCACR;
2. This order is necessary to prevent the contested issue upon appeal from becoming moot;
3. Consideration of the equities shows that without this order, Spano and the public would be irreparably harmed, which outweighs the harm, if any, to the Appellants;
4. Appellants cannot raise any "plausible theory" which could entitle them to reversal; and
5. Lifting of the stay alone is insufficient to afford complete relief, and requiring the appellant to post a sufficient bond during the pendency of the appeal is appropriate.

LEGAL STANDARD

Rule 241(a) sets out the general rule that "the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal." *See Carolina Park Associates, LLC v. Marino*, No. 2010-CP-10-6042, 2011 WL 9369844, at *1 (Com. Pl. June 27, 2011) ("Plaintiff … filed and served a Notice of Appeal challenging the … Order.[3] That appeal automatically stayed the Order pursuant to the general rule set out in Rule 241(a) of the South Carolina Appellate Court Rules."). After service of the notice of appeal, "Rule 241(c), SCACR, allows any party to seek an order lifting the automatic stay in cases involving the general rule." *Id*. Decisions under Rule 241 are discretionary. *See Carolina Water Service, Inc. v. Lexington Cnty. Joint Municipal Water and Sewer Comm'n*, No. 2001-CP-32-071, 2005 WL 6149020, at *1 (Com. Pl. May 24, 2005) (discussing the discretionary nature of Rule 225(c)(2), SCACR, the precursor to Rule 241).

Rule 241(c)(3), SCACR, provides:

> The granting of a supersedeas **or the lifting of the automatic stay** under this Rule may be conditioned upon such terms, **including but not limited to the filing of a bond** or undertaking, as the lower court … may deem appropriate. Further, where it appears that the granting **or lifting of a stay** … **is insufficient to afford complete relief**, the lower court … **may order other affirmative relief upon such terms as are deemed appropriate**.

(emphasis added).

In determining whether to issue an order under Rule 241, the lower court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot. *Cromwell v. Brisbane*, No. 2015-CP-10-00939, 2016 WL 10732385, at *2 (Com. Pl. Aug. 8, 2016) (citing Rule 241(c)(2), SCACR). "The [c]ourt may [also] be guided by relevant considerations other than jurisdiction and mootness." *Carolina Water*, 2005 WL 6149020, at *1 (such as balancing the equities); *see also Marino*, 2011 WL 9369844, at *1

[3] A copy of the *Marino* decision is attached for reference as **Exhibit 3**.

(considering whether the appellant could come forward with any "plausible theory" that, if accepted, would entitle the appellant to reversal).

ARGUMENT

1. This Court has jurisdiction to enter this Order.

Respondents seek an order lifting the automatic stay and requiring Appellants to post a sufficient bond during the pendency of the Third Appeal. This Court has discretion to award such relief under Rule 241(c)(3), SCACR. It is also proper for this Motion to be brought in the first instance to this Court. Rule 241(d)(1), SCACR provides: "Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay … must first be made to the lower court … which entered the order or decision on appeal."

Here, the following orders at issue in the Third Appeal were entered by this Court:

- Form 4 Order dated June 5, 2025;
- Order entered June 10, 2025;
- Form 4 Order entered June 30, 2025; and
- Order entered June 30, 2025.

See Ex. 2. There are also no "extraordinary circumstances" present here to justify a direct application to the Court of Appeals. *See Marino*, 2011 WL 9369844, at *1 (where none of the parties claimed that "extraordinary circumstances" existed, "the motion for stay was appropriately made before this Court in the first instance."). Accordingly, the Court has jurisdiction to decide this Motion.

2. The requested Order is necessary to prevent the contested issue on appeal from becoming moot.

In this context, "[a] case is moot where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant

of effectual relief impossible for the court." *Cromwell* 2016 WL 10732385, at *2 (quoting *S.C. Ret. Syst. Inv. Comm'n v. Loftis*, 402 S.C. 382, 384, 741 S.E.2d 757, 758 (2013)). "[M]oot appeals result when intervening events prevent a decision on appeal from having an immediate impact on the parties." *Id*. (quoting 15 S.C. Jur. Appeal and Error § 19) (Supp. 2014).

In *Marino,* the court cancelled the plaintiffs' lis pendens that covered land owned by the defendant. 2011 WL 9369844, at *1. The plaintiff filed and served a notice of appeal challenging the order cancelling the lis pendens. *Id.* The appeal automatically stayed the order pursuant to Rule 241(a). *Id.* The defendant filed a motion to lift the stay. *Id.*

There, the court noted that it had the discretion to lift the stay to prevent a contested issue from becoming moot, granted the motion to lift the stay, and ordered the lis pendens be cancelled "in order to afford [the defendant] the complete relief it is entitled to under Rule 241." *Id.* The court reasoned that: **"[i]f the lis pendens is allowed to stay in place for the course of this appeal, then the Court's order** that the lis pendens was not in compliance with South Carolina law **will be rendered moot in that Plaintiffs will have received exactly what they are not entitled to, namely a lis pendens during the course of this litigation that would hinder Defendant CDM in developing its property**." *Id.* (emphasis added). The court explained that if Rule 241 did not allow for relief in this situation, then a lis pendens would never be subject to effective cancellation, and orders cancelling a lis pendens would be rendered moot. *Id.* The court concluded that "**[t]his is the precise situation for which Rule 241 creates relief**." *Id.*

Here, the Court should lift the stay and require an adequate bond to prevent the underlying dispute from becoming moot. As in *Marino*, where the lis pendens would have delayed the owner's ability to develop its property, allowing the stay on the Commission's approval of the Anderson Reserve subdivision to remain in place throughout this Third Appeal would effectively grant

Appellants the very relief "they are not entitled to"—a prolonged halt on development. This would undermine the Court's prior rulings and unfairly hinder Spano's ability to exercise its property rights.

Moreover, if Rule 241 does not permit relief in this scenario, then any Commission decision approving a subdivision could be indefinitely stalled, rendering such approvals meaningless.[4] The Court must act to ensure its orders retain force and effect, and that procedural tactics are not used to obstruct lawful development.

3. The equities show that without this Order, Spano and the public would be irreparably harmed, which outweighs the harm, if any, to the Appellants.

In deciding a motion to lift the stay, courts may balance the equities. *See Carolina Water Service* 2005 WL 6149020, at *1. In *Carolina Water Service,* the movant served a condemnation notice on CWS and the Town of Lexington to condemn certain water works systems owned by CWS. *Id*. The court entered an order staying the proceedings under both the condemnation notice and a subsequently filed challenge action. *Id.* The movant then filed a motion to lift the stay. *Id.*

The court concluded that balancing the equities weighed in favor of lifting the automatic stay. *Id.* The motion was granted. *Id.* The court reasoned that the harm to the movant and to the general public caused by continued delay outweighed the harm, if any, to CWS. *Id.* The court reasoned that "[a]s long as the condemnation action is delayed, the movant is denied the opportunity to defend its right to condemn and the public suffers a similar hardship caused by the delay of benefits that would result if the movant successfully defends its right to condemn." *Id.* In contrast, the court found that there was no prejudice to CWS, and it was not burdened by "being forced to proceed with the challenge action they initiated more than three years ago." *Id.*

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[4] Thankfully, however, this is "the precise situation for which Rule 241 creates relief." *Marino*, 2011 WL 9369844, at *1.

The *Marino* court also analyzed the relative hardship between the parties as one reason for granting a motion to lift the automatic stay of the cancellation of the lis pendens. *See* 2011 WL 9369844, at *1. Specifically, the court found that "allowing the lis pendens **during an appeal of indefinite duration** would cause significant harm to [the defendant] since its business is the development and sale of the land in question. *Id.* (emphasis added). The court noted that [the defendant] had submitted uncontested affidavits that the lis pendens was jeopardizing significant sales and the development of the property. *Id.* In contrast, the court found no hardship to the non-movant. *Id.* The court found that "[w]ith the lis pendens in place, [the plaintiff] is impairing [the defendant's] investment in the property … **at no cost to itself whatsoever**." *Id.* (emphasis added).

As in *Carolina Water Service*, the harm caused by continued delay overwhelmingly favors lifting the stay. Spano—and the general public—will suffer significant prejudice if the Third Appeal proceeds while the Commission's approval of the Anderson Reserve subdivision is stayed. Spano will be unjustly denied the opportunity to develop its property, and potential business partners and beneficiaries of the development will be deprived of the economic and community benefits that would otherwise result.

Lifting the stay is not only critical to protecting Spano's property rights—it also serves the broader public interest. The Commission, composed of commissioners appointed by elected officials, carefully considered the relevant factors and approved the Anderson Reserve subdivision on multiple occasions. To allow a procedural stay to override those decisions indefinitely would undermine the democratic process and deprive the citizens of Anderson County of the economic, infrastructural, and community benefits that the realized development would bring.

In contrast, Appellants face no meaningful harm if the stay is lifted. They retain full access to the appellate process and can continue to pursue their claims without impeding lawful

development. Their persistence in reasserting the same arguments in this Third Appeal also demonstrates that they are undeterred by litigation and would suffer no prejudice from the lifting of the stay. Maintaining the stay would reward procedural repetition rather than substantive merit, effectively granting Appellants relief they have not earned through the judicial process; the balance of equities supports allowing development to proceed.

This case is also like *Marino*, because this Third Appeal of indefinite duration will cause significant harm to Spano because its business is also the development and sale of the land in question. The uncontested affidavit of Brett F. Kline establishes, among other things, that no "national title insurance company [will] insure real estate involved in ongoing litigation, including but not limited to appeal." (**Exhibit 4**). If real estate is uninsurable with a title company, lenders will not make loans for the purchase of real estate. *Id.* Finally, "real estate for which title insurance is unavailable is **unmarketable** as most purchasers will not purchase real estate that is uninsurable with a title company." *Id.* (emphasis added). Accordingly, by engaging in this Third Appeal, Appellants are effectively foreclosing Spano's ability to sell his land, indefinitely. This will cause Spano to incur damages of upwards of tens of millions of dollars in lost contracts and sales of his land during the pendency of the Third Appeal. Effectively, Appellants are impairing Spano's investment in the property at virtually no cost to themselves.

4. Appellants cannot raise any "plausible theory" which could, if accepted, entitle them to reversal.

The court in *Marino* also considered whether the appellant could come forward with any "plausible theory" entitling them to reversal. *See Marino*, 2011 WL 9369844, at *1. The court found that the plaintiff had made no showing that would allow the lis pendens to stay in place. *Id.* The court noted that the non-movant could not "legitimately maintain 'an action affecting the title to real property' as a matter of law. *Id.* The court further found that the non-movant was "unable

to cite any legal precedent in South Carolina" to support their position. *See id.* The court distinguished a case cited by the non-movant, explaining that unlike in the non-movant's cited case, in *Marino*, there was no legitimate basis for the non-movant to claim an interest in the real property as a matter of law and significant harm would ensue if the stay were not lifted. *See id.* The court granted the motion to lift the stay. *Id.*

Likewise, Appellants cannot come forward with any "plausible theory" entitling them to reversal in this Third Appeal. The Anderson County Planning Commission's decisions were supported by expert analysis, careful deliberation, and compliance with legal directives and county ordinances. *See Spano,* No. 2025-CP-04-00325, at *3-5. The Court has already found that the Commission acted reasonably, was not arbitrary or capricious, and that Appellants' arguments fail as a matter of law. *Id.* at *4-5. Given that Appellants have already received the relief they sought in the First Appeal and that Spano exceeded legal requirements in addressing their concerns, there is simply no legal or factual basis for overturning the Commission's approval. Rather than advancing any "plausible theory," this Third Appeal merely prolongs the delay of Spano's Anderson Reserve subdivision, undermines Spano's substantial investment in the property, and causes ongoing, irreparable harm by preventing lawful development from moving forward.

5. Lifting of the stay is insufficient here – requiring Appellant to post a sufficient bond pending appeal is necessary to afford Spano complete relief.

a. Lifting of the stay is insufficient here.

"[T]he Court is given broad powers to fashion relief that protects all parties during the course of an appeal." *Marino,* 2011 WL 9369844, at *1 (emphasis added). Rule 241(c) is clear: "where it appears that the granting or lifting of a stay … is insufficient to afford complete relief, the lower court … may order other affirmative relief upon such terms as are deemed appropriate." *Id.* (citing Rule 241(c), SCACR).

In *Marino*, the court ordered other affirmative relief in addition to the lifting of the stay because it found that lifting of a stay was insufficient to afford complete relief. *See id.* The court found that: "[t]he **only** way to afford [the defendant] complete relief from [the plaintiff's] lis pendens [was] by lifting the stay **and** cancelling the lis pendens." *Id.* (emphasis added). The court reasoned that even if the stay was lifted, so long as the lis pendens was in place, the plaintiff was "impairing [the defendant's] investment in the property without showing that [the plaintiff had] a right to do so." *Id. Compare Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 10-11, 567 S.E.2d 881, 886 (Ct. App. 2002) (explaining that the South Carolina Supreme Court's refusal to lift the automatic stay or require a bond where the stay effectively enjoined the defendants from freely selling their land was because there appeared to be a legitimate factual dispute supporting the appeal from the grant of summary judgment).

As in *Marino*, lifting the stay alone is insufficient to provide complete relief because Spano remains unable to sell or fully utilize its property while this frivolous Third Appeal is pending. *See* Ex. 4. Without a bond requirement, Appellants can continue to impair Spano's investment indefinitely—despite having no legal entitlement to such relief. To prevent further unjustified harm and ensure meaningful protection of Spano's rights, the Court must not only lift the stay but also require Appellants to post a sufficient bond. *See* Ex. 4 ("[N]ational title insurance compan[ies do not] insure real estate involved in ongoing litigation, including but not limited to decisions under appeal."). This is in stark contrast to *Poole*, where the South Carolina Court of Appeals explained that the South Carolina Supreme Court decided not to lift the automatic stay or require a bond because in that case, there appeared to be a legitimate factual dispute. There is no legitimate dispute here. Instead, Appellants' Third Appeal—just like the First and Second appeal—is without merit.

b. Requiring Appellant to post a sufficient bond pending appeal is necessary and appropriate to afford Spano complete relief.

Courts routinely require appellants to post a bond under Rule 241 where money judgments are involved. *See, e.g., Cromwell*, 2016 WL 10732385, at *2 ("As a condition of the stay, this Court finds that Nordic shall be required to post a cash bond as set forth herein"); *Wedgewood Condominium Ass'n v. Centex Homes*, No. 2018-CP-26-00307, 2023 WL 10476948, at *3 (Com. Pl. June 14, 2023) ("Centex may deposit with the court a check for the full amount of the verdict, $6,750,000.00, together with all accrued interest"); *Scott v. Porter*, No. 95-CP-42-803, 95-CP-42-804, 1998 WL 35165390, at *1 (Com. Pl. Aug. 28, 1998) ("[I]t is the opinion of this Court that the Defendants shall be required to post an appeal bond with the Clerk of Court for Spartanburg County in the amount of Six Million Dollars").

Similarly, a court may require a bond to be posted by the appellant (or to issue other relief) in addition to the granting of a motion to lift a stay. *See, e.g., Marino*, 2011 WL 9369844, at *1. In *Marino*, the court found that the **only** way to afford the defendants relief from the plaintiffs' lis pendens was by lifting the stay **and, in addition, by cancelling the lis pendens**. *Id.* The court reasoned that with the lis pendens in place, **the plaintiff was impairing the defendant's investment in the property without any showing that plaintiff had a right to do so**. *Id.* The court found that the plaintiff accomplished this at no cost to itself whatsoever. *Id.*

Given the Court's repeated findings and the highly deferential "any evidence" standard governing planning commission appeals, Appellants have an exceptionally low likelihood of prevailing on the merits of this Third Appeal. Spano has already demonstrated—through multiple rounds of litigation—that Appellants' claims lack substance, and the Commission's decisions have consistently been upheld as lawful, reasoned, and supported by expert evidence. Meanwhile, Spano continues to suffer real financial harm, unable to develop or sell its property, much like the improper delay seen in *Marino*. To afford Spano complete relief and prevent further unjustified

delay, the Court should not only lift the stay but also require Appellants to post a reasonable bond, in the amount of at least Seven Million Five Hundred Thousand ($7,500,000.00) Dollars,[5] ensuring they bear full responsibility for the consequences of their continued litigation. Without financial accountability, Appellants can indefinitely obstruct Spano's rights with no consequence. If their appeal truly has merit—which it does not—they should be willing to "put their money where their mouth is."

CONCLUSION

Appellants' Third Appeal presents no credible basis for reversal and carries an exceptionally high likelihood of failure. But its mere existence is costing Respondent millions of dollars and depriving it of the opportunity to use its land. For the reasons stated herein, Respondent Spano & Associates, Inc. respectfully requests this Honorable Court to lift the automatic stay, require Appellants to post a sufficient bond during the pendency of their Third Appeal, and to grant any other relief this Court deems just and proper.

In support of this motion, Spano relies upon the evidence on the record, the applicable law, additional memoranda, affidavits, or documentation as may be filed or submitted to the Court, and any oral arguments the Court shall hear.

Respectfully submitted,

GALLIVAN WHITE & BOYD, P.A.

s/Carter R. Massingill
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Ronald G. Tate, Jr. (SC Bar No. 5475)
55 Beattie Place, Suite 1200
Greenville, SC 29601
(864) 271- 9580
cmassingill@gwblawfirm.com
rtate@gwblawfirm.com

[5] *See* Ex. 1, ¶¶ 6-10.

August 6, 2025

Attorneys for Respondent

Exhibit 1

ELECTRONICALLY FILED - 2024 Jan 02 11:58 AM - ANDERSON - COMMON PLEAS - CASE#2024CP0400006

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	Civil Action No. 2024-CP-04-_____
Spano & Associates Asheville, LLC,	)	
	)	
Plaintiff/Appellant,	)	**SUMMONS**
	)	
v.	)	
	)	
Anderson County Planning Commission,	)	
	)	
Defendant/Respondent.	)	
	)	

TO: ANDERSON COUNTY PLANNING COMMISSION:

YOU ARE HEREBY SUMMONED and required to respond to the attached Notice of Appeal and Request for Pre-Litigation Mediation, a copy of which is herewith served upon you and to serve a copy of your response on the subscribers at their offices, Gallivan, White & Boyd, PA, 55 Beattie Place, Suite 1200, Greenville, South Carolina 29601, within thirty (30) days after the service hereof, exclusive of the day of such service.

Respectfully submitted,

January 2, 2024

/s/ Carter R. Massingill

Carter R. Massingill (S.C. Bar No. 101802)
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 10589 (29603)
55 Beattie Place, Suite 1200
Greenville, SC 29601
(T) (864) 271-9580
cmassingill@gwblawfirm.com

Attorneys for Plaintiff/Appellant

ELECTRONICALLY FILED - 2024 Jan 02 11:58 AM - ANDERSON - COMMON PLEAS - CASE#2024CP0400006

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	Civil Action No. 2024-CP-04-_____.
Spano & Associates Asheville, LLC,	)	
	)	
Plaintiff/Appellant,	)	**NOTICE OF APPEAL AND REQUEST FOR PRE-LITIGATION MEDIATION**
	)	
v.	)	
	)	
Anderson County Planning Commission,	)	
	)	
Defendant/Respondent.	)	
	)	

TO: ANDERSON COUNTY PLANNING COMMISSION:

Plaintiff/Appellant, Spano & Associates Asheville, LLC, by counsel and in accordance with §6-29-1150(D) of the Code of Laws of South Carolina, hereby submit this Notice of Appeal from the decision of the Anderson County Planning Commission on December 12, 2023, denying Plaintiff's Subdivision Plat and Variance Application (the Application) concerning the project known as "Anderson Reserve Phase II & III" (the Project) and requests pre-litigation mediation pursuant to §6-29-1155.

Background

1. Plaintiff/Appellant Spano & Associates Asheville, LLC (Spano), is a limited liability company organized and existing under the laws of the State of Florida. At all relevant times, Spano transacted business in Anderson County, South Carolina.

2. Defendant/Respondent, Anderson County Planning Commission, is an appointed local planning commission as defined in §6-29-310 of the Code of Laws of South Carolina created pursuant to legislation.

3. This Court has jurisdiction over the parties and the subject matter of this appeal.

4. Spano is the purchaser under certain real estate contract(s) concerning the real property underlying the Project, identified as 128 acres, more or less, at Highway 187 and Frants Grove Circle, in an unzoned area of Anderson County, and bearing tax map number 42-00-01-010 (the Property). Accordingly, Spano has an interest in the property and is an interested person pursuant to South Carolina law.

5. Spano intended to develop a single-family and townhome subdivision on the 56.48 acres of the Property, more or less, in accordance with phase II and III of the Project plans.

6. Notwithstanding the compliance of the plan and application with all applicable ordinances and standards, the Planning Commission denied the application. A copy of the Planning Commission's decision is attached and incorporated by reference as **Exhibit A**.

7. Pursuant to its development plans, Spano undertook a rigorous due diligence process and expended substantial funds in engineering, plat preparation, site design, surveys, and related studies, all incurred in anticipation that phases II and III of the Project would be developed on the Property.

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8. During the review period, Spano worked with Anderson County Planning and Community Development Department staff (Staff) to ensure that the proposed development complied with all ordinances applicable to unzoned residential subdivision projects in Anderson County. Spano took special care to elicit feedback from Staff on the proposed development and modified its plans accordingly (in response to specific Staff comments), to Staff's satisfaction.

9. The Planning Commission met on December 12, 2023. The Project application was on the agenda for the December 12, 2023 meeting.

10. At the meeting, Staff presented the application to the commission with the comment that it conformed to the ordinances and recommended approval.

11. Notwithstanding the compliance of the preliminary plat and application with all applicable ordinances and standards and the Staff's approval of the application, the Planning Commission moved to deny the application.

12. The Planning Commission did not mail written notice of the denial of the application to Spano as required by Section 6-29-1150 (D) of the Code of Laws of South Carolina. Nevertheless, Spano is hereby appealing the decision announced in the Planning Commission meeting of December 12, 2023.

Appeal

13. The grounds for denying the Application were without evidentiary support, and the denial of the application by the Planning Commission was arbitrary and capricious.

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14. The Planning Commission failed to apply the applicable standards and failed to consider the Application in a fair and unbiased manner.

15. Spano reserves the right to supplement the grounds for appeal based on approved Planning Commission minutes, transcript of hearing and any other exhibits resulting from the release of the Planning Commission's approved minutes which to date may be unavailable.

Reservation

16. Spano further reserves any additional claims and causes of action available to it including without limitation causes of action for unconstitutional taking, deprivation of substantive and procedural due process, and tort claims.

Request for Pre-Litigation Mediation

17. Spano requests Pre-Litigation Mediation pursuant to §6-29-1155 of the Code of Laws, in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules.

Prayer for Relief

WHEREFORE, Plaintiff/Appellant prays for the following relief:

A. That the Court issue an order reversing the December 12, 2023, decision of the Anderson County Planning Commission and ordering the approval of Plaintiff's Application for Phases II and III of the Project;

B. Order pre-litigation mediation; and

C. Such other and further relief as the Court may deem just and proper.

ELECTRONICALLY FILED - 2024 Jan 02 11:58 AM - ANDERSON - COMMON PLEAS - CASE#2024CP0400006

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

January 2, 2024

/s/ Carter R. Massingill

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Attorneys for Plaintiff/Appellant

ELECTRONICALLY FILED - 2024 Jan 02 11:58 AM - ANDERSON - COMMON PLEAS - CASE#2024CP0400006

Exhibit 2

ANDERSON COUNTY SOUTH CAROLINA

Welcome to: **ACPASS**

"Anderson County Public Access System and Services"

REAL PROPERTY / VEHICLE TAX / PROPERTY TAX / COURTS / PERMITS / FORMS

Main=>Real Property=>Property Search=>Select Record=>**Property Detail**

Property Record Detail

View Taxes | View Parcel

042-00-01-010-000		

SPANO + ASSOCIATES ASHEVILLE LLC	ANMED HEALTH
1540 INTERNATIONAL PKW STE 2000	800 N FANT ST
LAKE MARY FL	ANDERSON SC
32746-0000	29621-0000

5/20/2024	17381	00295	$ 3,858,000.00	SPANO + ASSOCIATES ASHEVILLE LLC
10/29/2007	8333	00129	$ 2,351,065.00	ANMED HEALTH
10/22/2007	8324	170	$ 10.00	RB PROPERTIES LLC + JAJ PROPERTIES LLC
3/08/1982	19T	43	$ 402,210.00	MOTOROLA INC
				RHODES KENNETH E TRUSTEE

	004
	3,858,330
	3,858,330
	3,858,330

CP S 3153/3 PP 88/837
F000 D000
TR 1 HWY 187 132.18 AC

2024	174.15		141060			141060	C	
2023	174.15		141060			141060	C	
2022	174.15		141060			141060	C	
2021	174.15		141060			141060	C	

Legal Disclaimer - HELP - Privacy Disclaimer

COPYRIGHT 2002, ANDERSON COUNTY SC

Him

Exhibit 3

South Carolina Secretary of State

Business Entities Online

File, Search, and Retrieve Documents Electronically

Spano & Associates Asheville, LLC

Corporate Information

Entity Id: 01374332

Entity Type: Limited Liability Company

Status: Good Standing

Domestic/Foreign: Foreign

Incorporated State: Florida

Important Dates

Effective Date: 12/04/2023

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

Registered Agent

Agent: James D. McCutchen

Address: 9 Distribution Court
Greer, South Carolina 29650

Official Documents On File

Filing Type	Filing Date
Application for a Certificate of Authority to Transact Business	12/04/2023

For filing questions please contact us at **803-734-2158**

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Exhibit 4

Detail by Entity Name

Florida Profit Corporation
SPANO & ASSOCIATES, INC.

Filing Information

Document Number	P99000003710
FEI/EIN Number	59-3564812
Date Filed	01/11/1999
Effective Date	01/15/1999
State	FL
Status	ACTIVE
Last Event	REINSTATEMENT
Event Date Filed	03/13/2020

Principal Address

1540 INTERNATIONAL PARKWAY
SUITE 2000
LAKE MARY, FL 32746

Changed: 01/17/2013

Mailing Address

1540 INTERNATIONAL PARKWAY
SUITE 2000
LAKE MARY, FL 32746

Changed: 01/17/2013

Registered Agent Name & Address

SPANO, RALPH S
1540 INTERNATIONAL PARKWAY
SUITE 2000
LAKE MARY, FL 32746

Name Changed: 03/13/2020

Address Changed: 01/16/2014

Officer/Director Detail

Name & Address

Title D

SPANO, RALPH S
1540 INTERNATIONAL PARKWAY ST. 2000
LAKE MARY, FL 32746

Annual Reports

Report Year	Filed Date
2023	01/22/2023
2024	02/28/2024
2025	04/29/2025

Document Images

04/29/2025 -- ANNUAL REPORT	View image in PDF format
02/28/2024 -- ANNUAL REPORT	View image in PDF format
01/22/2023 -- ANNUAL REPORT	View image in PDF format
01/29/2022 -- ANNUAL REPORT	View image in PDF format
02/05/2021 -- ANNUAL REPORT	View image in PDF format
03/13/2020 -- REINSTATEMENT	View image in PDF format
03/02/2016 -- ANNUAL REPORT	View image in PDF format
02/12/2017 -- ANNUAL REPORT	View image in PDF format
01/24/2016 -- ANNUAL REPORT	View image in PDF format
04/12/2015 -- ANNUAL REPORT	View image in PDF format
01/16/2014 -- ANNUAL REPORT	View image in PDF format
01/17/2013 -- ANNUAL REPORT	View image in PDF format
02/09/2012 -- ANNUAL REPORT	View image in PDF format
01/12/2011 -- ANNUAL REPORT	View image in PDF format
02/22/2010 -- ANNUAL REPORT	View image in PDF format
03/25/2009 -- ANNUAL REPORT	View image in PDF format
01/28/2008 -- ANNUAL REPORT	View image in PDF format
02/14/2007 -- ANNUAL REPORT	View image in PDF format
02/13/2006 -- ANNUAL REPORT	View image in PDF format
04/23/2005 -- ANNUAL REPORT	View image in PDF format
02/28/2004 -- ANNUAL REPORT	View image in PDF format
01/23/2003 -- ANNUAL REPORT	View image in PDF format
10/24/2002 -- REINSTATEMENT	View image in PDF format
04/26/2001 -- ANNUAL REPORT	View image in PDF format
04/07/2000 -- ANNUAL REPORT	View image in PDF format
01/11/1999 -- Domestic Profit	View image in PDF format

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Hubert N. Smith, Jr. and Stanley Hix, *Plaintiffs/Appellants*, v. Anderson County Planning Commission and Spano & Associates, Inc., *Defendants/Respondents*.	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT Civil Action No. 2025-CP-04-00328 **SPANO & ASSOCIATES, INC.'S MOTION TO CORRECT THE RECORD UNDER RULE 60(A), SCRCP**

Respondent Spano & Associates, Inc. ("Spano"), respectfully moves the Court on the tenth day after service of this Motion, or at such other time as established by the Court, pursuant to Rule 60(a) of the South Carolina Rules of Civil Procedure, for an order establishing (1) that all references shall to Spano & Associates, Inc., shall be treated as references to Spano & Associates Asheville, LLC, in the following actions: *Hubert N. Smith Jr. and Stanley Hix v. Anderson Cnty. Planning Comm'n*, No. 2024-CP-04-00975 and *Hubert N. Smith Jr. and Stanley Hix v. Anderson Cnty. Planning Comm'n and Spano & Associates, Inc.*, No. 2025-CP-04-00328; and (2) permitting the captions on any future filings in such actions to properly identify Spano & Associates Asheville, LLC as the as the Respondent (as owner of the subject property). The grounds for this motion are as follows:

1. On May 7, 2024, Appellants Hubert N. Smith, Jr. and Stanley Hix filed an appeal regarding the Anderson County Planning Commission's ("Commission") approval of the subdivision application for the Anderson Reserve neighborhood ("Property"), styled *Hubert N. Smith Jr. and Stanley Hix v. Anderson Cnty. Planning Comm'n*, No. 2024-CP-04-00975 ("First Appeal").

2. On October 28, 2024, Spano & Associates, Inc. filed a Motion to Intervene in the First Appeal.

3. On February 21, 2025, this Court entered an Order granting the Motion to Intervene of Spano & Associates, Inc. and granting the Commission's Motion to Dismiss the First Appeal.

4. On February 13, 2025, Appellants filed a second appeal regarding the Commission's approval of the subdivision application for the Property, styled *Hubert N. Smith Jr. and Stanley Hix v. Anderson Cnty. Planning Comm'n and Spano & Associates, Inc.*, No. 2025-CP-04-00328 ("Second Appeal").

5. On June 30, 2025, this Court entered an Order dismissing the Second Appeal.

6. Since the Order dismissing the Second Appeal was issued on June 30, 2025, undersigned counsel has learned that the correct ownership entity referenced in the filings for both the First and Second Appeals should have been Spano & Associates Asheville, LLC, *not* Spano & Associates, Inc. This is because Spano & Associates Asheville, LLC holds the fee simple interest in the Property.

7. Under Rule 60(a), SCRCP, this Court has the authority to correct any clerical mistakes or errors in the record due to mistake or oversight. *See* Rule 60(a), SCRCP (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) (emphasis added)." (Emphasis added).

8. Accordingly, Spano & Associates, Inc. requests relief in the form of an Order establishing that (1) all references shall to Spano & Associates, Inc., shall be treated as references to Spano & Associates Asheville, LLC, in the following actions: *Hubert N. Smith Jr. and Stanley Hix v. Anderson Cnty. Planning Comm'n*, No. 2024-CP-04-00975 and *Hubert N. Smith Jr. and*

Stanley Hix v. Anderson Cnty. Planning Comm'n and Spano & Associates, Inc., No. 2025-CP-04-00328, to correct this error in the record in such actions; and (2) permitting the captions on any future filings in such actions to properly identify Spano & Associates Asheville, LLC as the Respondent (as owner of the Property).

In support of this motion, Spano relies upon the evidence on the record, the applicable law, additional memoranda, affidavits, or documentation as may be filed or submitted to the Court, and any oral arguments the Court shall hear.

Respectfully submitted,

GALLIVAN WHITE & BOYD, P.A.

s/Carter R. Massingill
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August 6, 2025

Attorneys for Spano & Associates, Inc.

ELECTRONICALLY FILED - 2025 Aug 25 5:30 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Hubert N. Smith, Jr. and Stanley Hix, Plaintiffs, v. Anderson County Planning Commission, and Spano & Associates, Inc. Defendant.	))))))))))))	IN THE COURT OF COMMON PLEAS IN THE 10TH CIRCUIT CASE NO: 2025-CP-04-00328 **PLAINTIFFS' MEMORANDUM IN OPPOSITION TO THE MOTION TO CORRECT THE RECORD AND THE MOTION TO LIFT THE AUTOMATIC STAY AND POST A BOND**

Statement of the Case

This case is an appeal from the Anderson County Planning Commission's decision to give preliminary and final approval to a residential subdivision named Anderson Reserve. This case is the **third** appeal related to the proposed subdivision. The first appeal was ***Spano & Associates Asheville, LLC*** *v. Anderson County Planning Commission*, Civil Action Number 2024-CP-04-00006, filed January 2, 2024 **(Exhibit 1)**.

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 to the Court of Appeals.

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

History of the Case

In Civil Action Number 2024-CP-04-00975, (the second appeal) Plaintiffs allege that the Planning Commission had failed to adequately consider and address the presence of graves of enslaved persons on the land in the proposed subdivision. On August 30, 2024, this Court ruled for the Plaintiffs: "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. On September 9, 2024, the Planning Commission filed a Motion to Alter or Amend the Court's decision.

On October 25, 2024, the Court held a conference call with the parties and the developer. The Court orally denied the Planning Commission's Motion to Alter or Amend and remanded the case to the Planning Commission.

On October 28, 2024, **Spano & Associates, Inc**. filed a Motion to Intervene. 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 encourage 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*).

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.* (*Emphasis added*).

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Based on these representations of **Spano & Associates, Inc**., this Court entered a Form 4 Order February 7, 2025, granting the Motion to Intervene. On February 21, 2025, this 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*).

This Court also granted the Planning Commission's Motion to Dismiss because the Plaintiffs 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." The Court found **Spano & Associates, Inc**. to be a "necessary party." Plaintiffs had failed to serve **Spano & Associates, Inc.** Accordingly, the Court found that the Plaintiffs 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. This Court granted the Motion to Dismiss for failure to serve **Spano & Associates, Inc.**

On February 13, 2025, Plaintiffs filed the third appeal, related to the actions of the Planning Commission in January 2025. Having had their earlier appeal dismissed, Plaintiffs named **Spano & Associates, Inc**. as a Defendant, in addition to the Anderson County Planning Commission.

Plaintiffs 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:

> **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

ELECTRONICALLY FILED - 2025 Aug 25 5:30 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

> 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 [earlier] 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 this Court that it was the **owner and developer** of the property at issue.

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

Plaintiffs filed Notice of Appeal to the Court of Appeals.

Motions by Spano & Associates, Inc.

On August 6, 2025, **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

ELECTRONICALLY FILED - 2025 Aug 25 5:30 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

to all previous representations, **Spano & Associates, Inc.** now tells the Court that it is **not** the owner of the property; but rather **another entity** called "**Spano & Associates, Asheville, LLC**" owns the property. The Defendant, **Spano & Associates, Inc.,** moved the Court to **change the identity** of the owner of the property from **Spano & Associates, Inc**. to **Spano & Associates Asheville, LLC**.

Unlike the prior representations to the Court, this latest representation appears to be factually accurate. Anderson County records indicate that on May 20, 2024, **Spano & Associates Asheville, LLC** purchased the property in question from AnMed **(Exhibit 2)**.

I. BECAUSE SPANO & ASSOCIATES, INC. DOES NOT OWN THE PROPERTY, IT LACKS STANDING TO MAKE ANY MOTION.

When **Spano & Associates Asheville, LLC** was dissatisfied with the initial denial by the Planning Commission, **Spano & Associates Asheville, LLC** appealed the decision to this Court. ***Spano & Associates Asheville, LLC*** *v. Anderson County Planning Commission*, Civil Action Number 2024-CP-04-00006, filed January 2, 2024 **(Exhibit 1)**.

A search by the undersigned attorney at the website of the South Carolina Secretary of State's office disclosed 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 named **Spano & Associates, Inc**.

Plaintiff did find an entity called **Spano & Associates, Inc**. on the website of the Florida Secretary of State **(Exhibit 4).**

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.

ELECTRONICALLY FILED - 2025 Aug 25 5:30 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

Similarly, in its Answer in the present action 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. (See Answer, par. 3).

Spano & Associates, Inc. also 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; just **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. Plaintiffs respectfully suggest that 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.

II. CHANGING THE DEVELOPER FROM SPANO & ASSOCIATES, INC. TO SPANO & ASSOCIATES ASHEVILLE, LLC IS NOT CORRECTING A CLERICAL ERROR.

Spano & Associates, Inc. has filed a Motion to Correct the Record under Rule 60(a), SCRCP. 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.

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Plaintiffs respectfully suggest that changing the developer from **Spano & Associates, Inc**. to **Spano & Associates Asheville, LLC** is not correcting a "clerical error."

Attorneys for the developer, **Spano & Associates, Inc.** participated in multiple videoconferences with the Court and counsel in the earlier action. They were aware of the ongoing litigation that had been pending for many months. They filed a Motion to Intervene only after the Court had ruled. **Spano & Associates, Inc**. now comes into Court and says that some other entity is the owner and developer. The pleadings in all three appeals demonstrate that changing the identity of corporate entity is not a mere clerical error.

Plaintiffs respectfully suggest that changing the identity of the corporate entity amounts to a **major, substantive change** which has legal consequences for the case as a whole and for all the motions filed by **Spano & Associates, Inc**. This cannot be the correction of a mere clerical error.

III. THE DEVELOPER CANNOT CLAIM UNFAIR DAMAGES OR UNFAIR SURPRISE BECAUSE THE DEVELOPER KNEW ABOUT THE LITIGATION AND THE PRESENCE OF THE SLAVE GRAVES BEFORE IT BOUGHT THE PROPERTY.

After Plaintiffs first appealed (April 2024), **Spano & Associates Asheville, LLC** bought the property May 20, 2024, even though it was in litigation. Further, Plaintiffs had raised the issue of slave graves at the Planning Commission meeting in December 2023. Furthermore, Plaintiffs raised the slave graves issue on multiple occasions at the Planning Commission between December 2023 and May 20, 2024. When the developer lost the vote at the Planning Commission in the March 2024 meeting, the plaintiff and a previous landowner and other concerned citizens spoke with a lawyer and the engineer for the developer about the graves. The previous landowner verbally gave them two areas to search for the slave graves. Kenneth Eugene Rhodes also gave an affidavit to the Planning Commissioners during the next meeting in April 2024, detailing two locations where graves were present. **(Exhibit 5)**.

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The Developer bought the property with its eyes wide open. Immediately after the purchase, it hired its own architects to look for the graves, starting in early June 2024. But the developer did not ask to be a party until October 2024. The developer allowed the Planning Commission to represent its interests.

If **Spano & Associates Asheville, LLC** had not bought the property during litigation, the developer would have no costs associated with the property, as the developer was only **under contract** with AnMed to buy. Now, **Spano & Associates, Inc**. claims damages for not being able to sell the property (and it doesn't even **own** the property).

IV. A MOTION TO LIFT THE AUTOMATIC STAY, OR TO REQUIRE A BOND IS NOT APPROPRIATE BECAUSE APPELLANTS HAVE A "PLAUSIBLE THEORY" FOR APPEAL.

Fourth, **Spano & Associates, Inc**. condescendingly asserts Appellants cannot raise "any plausible theory" for appeal in this case, and therefore the automatic stay should be lifted, and the Court should require a $7.5 million bond to protect the interests of **Spano & Associates, Inc**., who after litigating for months, now says it does not own the property. Plaintiffs respectfully suggest that that fact alone raises a "plausible theory" for appeal.

Plaintiffs respectfully suggest that they also possess **other** plausible theories for this appeal. In December 2023, when the Planning Commission denied Spano's Phase II application, Spano appealed to the Circuit Court (first appeal) **(Exhibit 1)**. Spano's appeal was on the Court docket for April or May 2024.

After Plaintiffs appealed (April 2024), **Spano & Associates Asheville, LLC** bought the property May 20, 2024 **(Exhibit 2)**, as stated above, with their eyes wide open, even though it was in litigation. The buyer knew of Plaintiff's allegations about the graves.

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The developer hired an architect in June, but provided its archeological evidence to Anderson County only **after** the Court had announced its intent to rule against the Planning Commission and give Plaintiffs the opportunity to find the graves in August, 2024.

The developer's surveyor found "suggested" graves, in an area it had already designated as a park, and said the "graves" would be protected; but the surveyor failed to find Graveyard Hill or any real historical, archeological sites.

The Court gave Plaintiffs 10 days to find the graves, but Spano issued a trespass notice to the Plaintiffs. Nevertheless, the Plaintiffs found Graveyard Hill and verified it within a few days. The developer had not surveyed the area where Plaintiffs found Graveyard Hill. How did the developer's archeologist fail to find Graveyard Hill?

The developer's second survey in December 2024 (adopting the Plaintiffs' survey), changed the surveyor's opinion, and asserted there are **no** graves where they initially said they "found" them. How did their first survey find the alleged graves, and the second survey did not?

In the Plaintiffs' first appeal, the Court gave the Planning Commission 4 questions to consider upon remand. The Planning Commission's two motions in January 2025 failed to address those questions.

In January 2025, the Planning Commission voted to reaffirm the **April 2024** map that fails to mention or protect the graves. The County's response to Plaintiff's FOIA request establishes that. **(Exhibit 6)**.

Plaintiffs 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. 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 might not even have known that there was

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another map, different from the one they voted on, the one in the official records, the April 2024 map that does not protect the graves. For all these reasons, Appellants have presented "plausible theories" for their appeal.

CONCLUSION

First, if **Spano & Associates, Inc**. is **not** the owner of the property, then it does not have **standing** to move the Court for an accelerated hearing, to lift the automatic stay, or to impose a substantial bond during the pendency of this appeal, or any of the other Motions.

Second, if **Spano & Associates, Inc**. is **not** the developer, and has not been the developer during this whole litigation process, as represented by the current motion, then changing the identity of the developer to **Spano & Associates Asheville, LLC** is **not** a mere clerical error. It's the identification of a completely different entity as the developer and owner of the property. This is not a clerical error appropriate for a motion under Rule 60(a)

Third, the developer bought the real estate **after** Plaintiffs filed their initial appeal of the decision of the Planning Commission, and after the plaintiff said disclose the presence of slave graves. The developer bought the property with their eyes wide open, and they assume the risk of the litigation. Accordingly, they should not be heard to complain about damages resulting from the litigation.

Fourth, the motion to lift the automatic stay, and to impose his potential bond is not appropriate in this case because Appellants have articulated plausible theories and issues to be determined on appeal, starting with the fact that **Spano & Associates, Inc**. is **not** the owner.

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For all these reasons, Plaintiffs pray the Court to deny all the motions filed by **Spano & Associates, Inc**.

Respectfully submitted,

THE CARPENTER LAW FIRM, PC
s/ *James G. Carpenter*
S.C. Bar No. 1136
819 East North Street
Greenville, SC 29601
(864) 235-1269
jim@carpenterlawfirm.net
Attorney for the Plaintiffs

August 25, 2025

ELECTRONICALLY FILED - 2025 Aug 25 5:30 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

Exhibit 1

ELECTRONICALLY FILED - 2025 Aug 25 5:30 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	Civil Action No. 2024-CP-04-_____
Spano & Associates Asheville, LLC,	)	
	)	
Plaintiff/Appellant,	)	**SUMMONS**
	)	
v.	)	
	)	
Anderson County Planning Commission,	)	
	)	
Defendant/Respondent.	)	
	)	

TO: ANDERSON COUNTY PLANNING COMMISSION:

YOU ARE HEREBY SUMMONED and required to respond to the attached Notice of Appeal and Request for Pre-Litigation Mediation, a copy of which is herewith served upon you and to serve a copy of your response on the subscribers at their offices, Gallivan, White & Boyd, PA, 55 Beattie Place, Suite 1200, Greenville, South Carolina 29601, within thirty (30) days after the service hereof, exclusive of the day of such service.

Respectfully submitted,

January 2, 2024

/s/ Carter R. Massingill

Carter R. Massingill (S.C. Bar No. 101802)
GALLIVAN, WHITE & BOYD, P.A.
Post Office Box 10589 (29603)
55 Beattie Place, Suite 1200
Greenville, SC 29601
(T) (864) 271-9580
cmassingill@gwblawfirm.com

Attorneys for Plaintiff/Appellant

ELECTRONICALLY FILED 2024 Jan 2 5:13:05 PM ANDERSON - COMMON PLEAS - CASE#2024CP0400388

ELECTRONICALLY FILED - 2024 Aug 23 5:36 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400928

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	Civil Action No. 2024-CP-04-_____.
Spano & Associates Asheville, LLC,	)	
	)	
Plaintiff/Appellant,	)	**NOTICE OF APPEAL AND REQUEST FOR PRE-LITIGATION MEDIATION**
	)	
v.	)	
	)	
Anderson County Planning Commission,	)	
	)	
Defendant/Respondent.	)	
	)	

TO: ANDERSON COUNTY PLANNING COMMISSION:

Plaintiff/Appellant, Spano & Associates Asheville, LLC, by counsel and in accordance with §6-29-1150(D) of the Code of Laws of South Carolina, hereby submit this Notice of Appeal from the decision of the Anderson County Planning Commission on December 12, 2023, denying Plaintiff's Subdivision Plat and Variance Application (the Application) concerning the project known as "Anderson Reserve Phase II & III" (the Project) and requests pre-litigation mediation pursuant to §6-29-1155.

Background

1. Plaintiff/Appellant Spano & Associates Asheville, LLC (Spano), is a limited liability company organized and existing under the laws of the State of Florida. At all relevant times, Spano transacted business in Anderson County, South Carolina.

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2. Defendant/Respondent, Anderson County Planning Commission, is an appointed local planning commission as defined in §6-29-310 of the Code of Laws of South Carolina created pursuant to legislation.

3. This Court has jurisdiction over the parties and the subject matter of this appeal.

4. Spano is the purchaser under certain real estate contract(s) concerning the real property underlying the Project, identified as 128 acres, more or less, at Highway 187 and Frants Grove Circle, in an unzoned area of Anderson County, and bearing tax map number 42-00-01-010 (the Property). Accordingly, Spano has an interest in the property and is an interested person pursuant to South Carolina law.

5. Spano intended to develop a single-family and townhome subdivision on the 56.48 acres of the Property, more or less, in accordance with phase II and III of the Project plans.

6. Notwithstanding the compliance of the plan and application with all applicable ordinances and standards, the Planning Commission denied the application. A copy of the Planning Commission's decision is attached and incorporated by reference as **Exhibit A**.

7. Pursuant to its development plans, Spano undertook a rigorous due diligence process and expended substantial funds in engineering, plat preparation, site design, surveys, and related studies, all incurred in anticipation that phases II and III of the Project would be developed on the Property.

ELECTRONICALLY FILED 2025 Aug 25 3:09 PM ANDERSON COMMON PLEAS - CASE#2025CP0400328

8. During the review period, Spano worked with Anderson County Planning and Community Development Department staff (Staff) to ensure that the proposed development complied with all ordinances applicable to unzoned residential subdivision projects in Anderson County. Spano took special care to elicit feedback from Staff on the proposed development and modified its plans accordingly (in response to specific Staff comments), to Staff's satisfaction.

9. The Planning Commission met on December 12, 2023. The Project application was on the agenda for the December 12, 2023 meeting.

10. At the meeting, Staff presented the application to the commission with the comment that it conformed to the ordinances and recommended approval.

11. Notwithstanding the compliance of the preliminary plat and application with all applicable ordinances and standards and the Staff's approval of the application, the Planning Commission moved to deny the application.

12. The Planning Commission did not mail written notice of the denial of the application to Spano as required by Section 6-29-1150 (D) of the Code of Laws of South Carolina. Nevertheless, Spano is hereby appealing the decision announced in the Planning Commission meeting of December 12, 2023.

Appeal

13. The grounds for denying the Application were without evidentiary support, and the denial of the application by the Planning Commission was arbitrary and capricious.

14. The Planning Commission failed to apply the applicable standards and failed to consider the Application in a fair and unbiased manner.

15. Spano reserves the right to supplement the grounds for appeal based on approved Planning Commission minutes, transcript of hearing and any other exhibits resulting from the release of the Planning Commission's approved minutes which to date may be unavailable.

Reservation

16. Spano further reserves any additional claims and causes of action available to it including without limitation causes of action for unconstitutional taking, deprivation of substantive and procedural due process, and tort claims.

Request for Pre-Litigation Mediation

17. Spano requests Pre-Litigation Mediation pursuant to §6-29-1155 of the Code of Laws, in accordance with South Carolina Circuit Court Alternative Dispute Resolution Rules.

Prayer for Relief

WHEREFORE, Plaintiff/Appellant prays for the following relief:

A. That the Court issue an order reversing the December 12, 2023, decision of the Anderson County Planning Commission and ordering the approval of Plaintiff's Application for Phases II and III of the Project;

B. Order pre-litigation mediation; and

C. Such other and further relief as the Court may deem just and proper.

ELECTRONICALLY FILED - 2024 Jan 23 1:36 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0400328

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

January 2, 2024

/s/ Carter R. Massingill

Carter R. Massingill (S.C. Bar No. 101802)
Lee H. Nanney (S.C. Bar No. 105480)
Post Office Box 10589 (29603)
55 Beattie Place, Suite 1200
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(T) (864) 271-9580
cmassingill@gwblawfirm.com
lnanney@gwblawfirm.com

Attorneys for Plaintiff/Appellant

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Exhibit 2

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ANDERSON COUNTY SOUTH CAROLINA

Welcome to: **ACPASS**

"Anderson County Public Access System and Services"

REAL PROPERTY / VEHICLE TAX / PROPERTY TAX / COURTS / PERMITS / FORMS

Main=>Real Property=>Property Search=>Select Record=>**Property Detail**

ELECTRONICALLY FILED - 2025 Aug 25 5:30 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

Property Record Detail

View Taxes | View Parcel

Tax Map No	Old Tax Map No	Account No
042-00-01-010-000		

Owner Information

SPANO + ASSOCIATES ASHEVILLE LLC	ANMED HEALTH
1540 INTERNATIONAL PKW STE 2000	800 N FANT ST
LAKE MARY FL	ANDERSON SC
32746-0000	29621-0000

Sale Information

5/20/2024	17381	00295	$ 3,858,000.00	SPANO + ASSOCIATES ASHEVILLE LLC
10/29/2007	8333	00129	$ 2,351,065.00	ANMED HEALTH
10/22/2007	8324	170	$ 10.00	RB PROPERTIES LLC + JAJ PROPERTIES LLC
3/08/1982	19T	43	$ 402,210.00	MOTOROLA INC
				RHODES KENNETH E TRUSTEE

Property Information

	004
	3,858,330
	3,858,330
	3,858,330

Legal Description

CP S 3153/3 PP 88/837
F000 D000
TR 1 HWY 187 132.18 AC

Assessment Info

2024	174.15		141060			141060	C	
2023	174.15		141060			141060	C	
2022	174.15		141060			141060	C	
2021	174.15		141060			141060	C	

Legal Disclaimer - HELP - Privacy Disclaimer

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Him

Exhibit 3

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South Carolina Secretary of State

Business Entities Online

File, Search, and Retrieve Documents Electronically

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Spano & Associates Asheville, LLC

Corporate Information

Entity Id: 01374332

Entity Type: Limited Liability Company

Status: Good Standing

Domestic/Foreign: Foreign

Incorporated State: Florida

Important Dates

Effective Date: 12/04/2023

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

Registered Agent

Agent: James D. McCutchen

Address: 9 Distribution Court
Greer, South Carolina 29650

Official Documents On File

Filing Type	Filing Date
Application for a Certificate of Authority to Transact Business	12/04/2023

For filing questions please contact us at **803-734-2158**

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Exhibit 4

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Detail by Entity Name

Florida Profit Corporation
SPANO & ASSOCIATES, INC.

Filing Information

Document Number	P99000003710
FEI/EIN Number	59-3564812
Date Filed	01/11/1999
Effective Date	01/15/1999
State	FL
Status	ACTIVE
Last Event	REINSTATEMENT
Event Date Filed	03/13/2020

Principal Address

1540 INTERNATIONAL PARKWAY
SUITE 2000
LAKE MARY, FL 32746

Changed: 01/17/2013

Mailing Address

1540 INTERNATIONAL PARKWAY
SUITE 2000
LAKE MARY, FL 32746

Changed: 01/17/2013

Registered Agent Name & Address

SPANO, RALPH S
1540 INTERNATIONAL PARKWAY
SUITE 2000
LAKE MARY, FL 32746

Name Changed: 03/13/2020

Address Changed: 01/16/2014

Officer/Director Detail

Name & Address

Title D

SPANO, RALPH S
1540 INTERNATIONAL PARKWAY ST. 2000
LAKE MARY, FL 32746

Annual Reports

Report Year	Filed Date
2023	01/22/2023
2024	02/28/2024
2025	04/29/2025

Document Images

04/29/2025 -- ANNUAL REPORT	View image in PDF format
02/28/2024 -- ANNUAL REPORT	View image in PDF format
01/22/2023 -- ANNUAL REPORT	View image in PDF format
01/29/2022 -- ANNUAL REPORT	View image in PDF format
02/05/2021 -- ANNUAL REPORT	View image in PDF format
03/13/2020 -- REINSTATEMENT	View image in PDF format
03/02/2016 -- ANNUAL REPORT	View image in PDF format
02/12/2017 -- ANNUAL REPORT	View image in PDF format
01/24/2016 -- ANNUAL REPORT	View image in PDF format
04/12/2015 -- ANNUAL REPORT	View image in PDF format
01/16/2014 -- ANNUAL REPORT	View image in PDF format
01/17/2013 -- ANNUAL REPORT	View image in PDF format
02/09/2012 -- ANNUAL REPORT	View image in PDF format
01/12/2011 -- ANNUAL REPORT	View image in PDF format
02/22/2010 -- ANNUAL REPORT	View image in PDF format
03/25/2009 -- ANNUAL REPORT	View image in PDF format
01/28/2008 -- ANNUAL REPORT	View image in PDF format
02/14/2007 -- ANNUAL REPORT	View image in PDF format
02/13/2006 -- ANNUAL REPORT	View image in PDF format
04/23/2005 -- ANNUAL REPORT	View image in PDF format
02/28/2004 -- ANNUAL REPORT	View image in PDF format
01/23/2003 -- ANNUAL REPORT	View image in PDF format
10/24/2002 -- REINSTATEMENT	View image in PDF format
04/26/2001 -- ANNUAL REPORT	View image in PDF format
04/07/2000 -- ANNUAL REPORT	View image in PDF format
01/11/1999 -- Domestic Profit	View image in PDF format

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Exhibit 5

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AFFIDAVIT OF KENNETH EUGENE RHODES

PERSONALLY CAME BEFORE ME the Affiant, Kenneth Eugene Rhodes who, after being duly sworn, did state and/or affirm as follows:

1. I am over the age of eighteen (18) years, am of sound mind, am not under the influence of any substance that is likely to impair my ability to give testimony, and am competent to offer this statement.
2. I currently reside at 6916 Hwy 187, Anderson, South Carolina 29625
3. In or about the late 1930's, my father, John Lee Rhodes, who was a deputy police officer in Anderson County, acquired property, including the property west of highway 187, adjoining Fant's Grove Circle, then known as the Rivoli Plantation (the "Property").
4. I was around ten years old when the Property was acquired and lived there with my father, mother, and some of my siblings.
5. The portion of the Property currently owned by AnMed was in my family until 1982, when it was sold to Motorola, Inc.
6. When my father bought the Property in the late 1930's, there were black men who worked on the Property who were descendants of the slaves
7. At the time, the Property had a plantation home called Rivoli and a barn on the top of a hill on the Property.
8. We had cattle and cotton on the Property.
9. There were three wooden buildings near the barn and some pecan trees.
10. My father told me slaves had lived in the buildings.
11. In the 1940s my father also told me there were slave graves on the Property.

12. When I walked the Property, I could see an area where the ground had sunken.

13. When I asked my father what it was, he told me slaves were buried in shallow graves.

14. I don't know exactly where all the graves are.

15. Some were located on the hill and behind the barn.

16. There were some graves near where a spring started and on a short branch not too far from the roads.

17. I affirm, under the pains and penalties of perjury, that the foregoing statements of fact are true to the best of my knowledge, information and belief.

FURTHER THE AFFIDAVIT SAYETH NAUGHT.

Kenneth E Rhodes

Kenneth Eugene Rhodes

SIGNED AND SUBSCRIBED BEFORE ME

Lisa M. Burdette
Signature of Notary

Lisa M. Burdette
Printed Name

Notary Public for the State of South Carolina
This 9th day of April, 2024.

My Commission Expires: April 30, 2031

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Exhibit 6

ELECTRONICALLY FILED - 2025 Aug 25 5:30 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

From: **Lizzy R. Wilkes** <erwilkes@andersoncountysc.org>
Date: Mon, Apr 21, 2025 at 9:31 AM
Subject: FOIA Request
To: Stanley Hix <stanleyhix@gmail.com>

Please allow this letter to serve as Anderson County's response to your South Carolina Freedom of Information Act ("FOIA") request.

Anderson County is providing the information responsive to your request in accordance with S.C. Code Section 30-4-30 and relevant exemptions in the Act, particularly Section 30-4-40. After conducting a reasonable search of its existing records, Anderson County is making available the enclosed documents.

Thank you for your interest in Anderson County

ANDERSON COUNTY
SOUTH CAROLINA

Lizzy Wilkes
Paralegal
Anderson County

O: 864 964-6538
F: 864 260-4548
erwilkes@andersoncountysc.org

Historic Courthouse
101 S. Main Street
Anderson, SC 29624

P.O. Box 8002
Anderson, SC 29622

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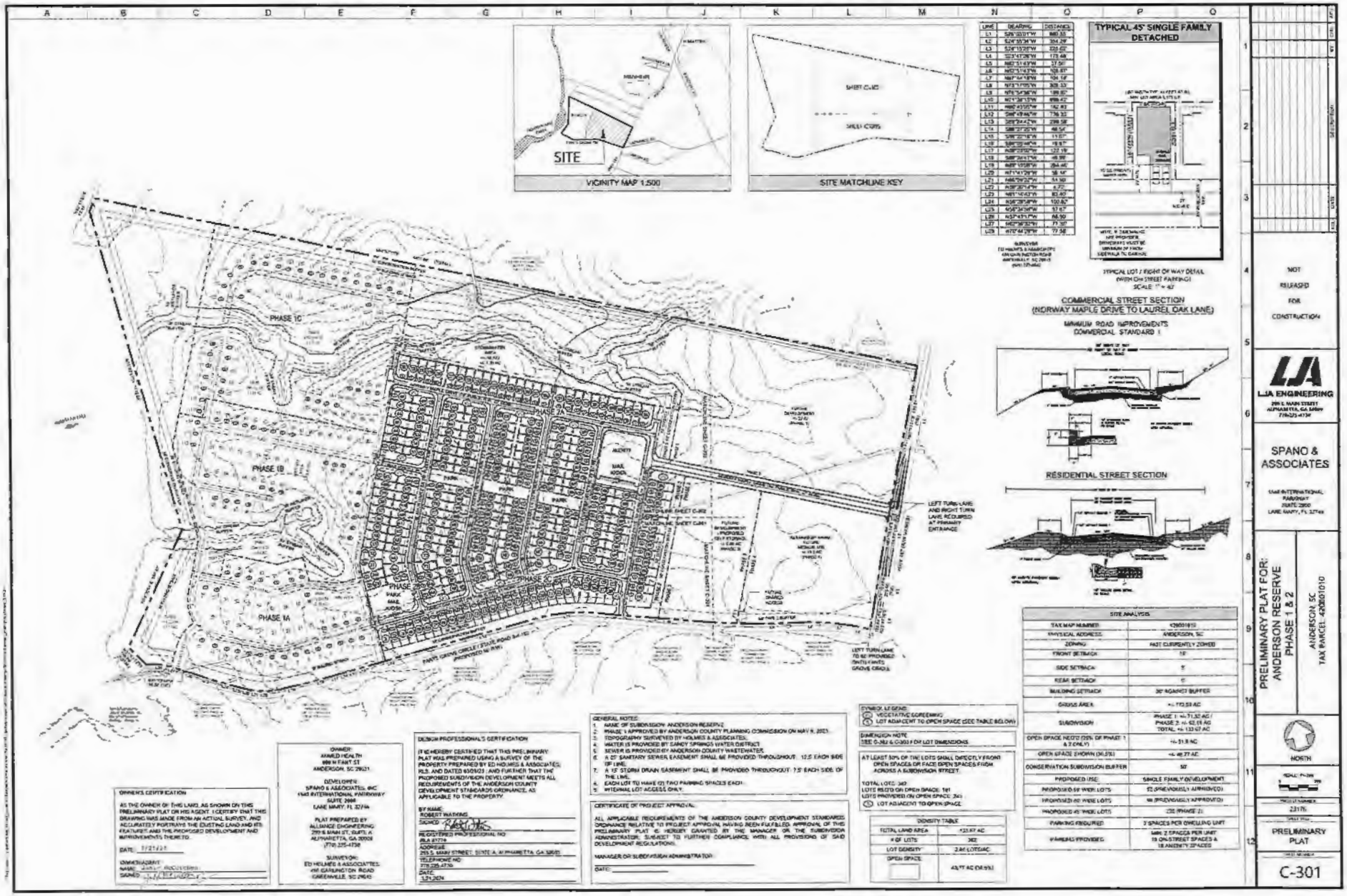
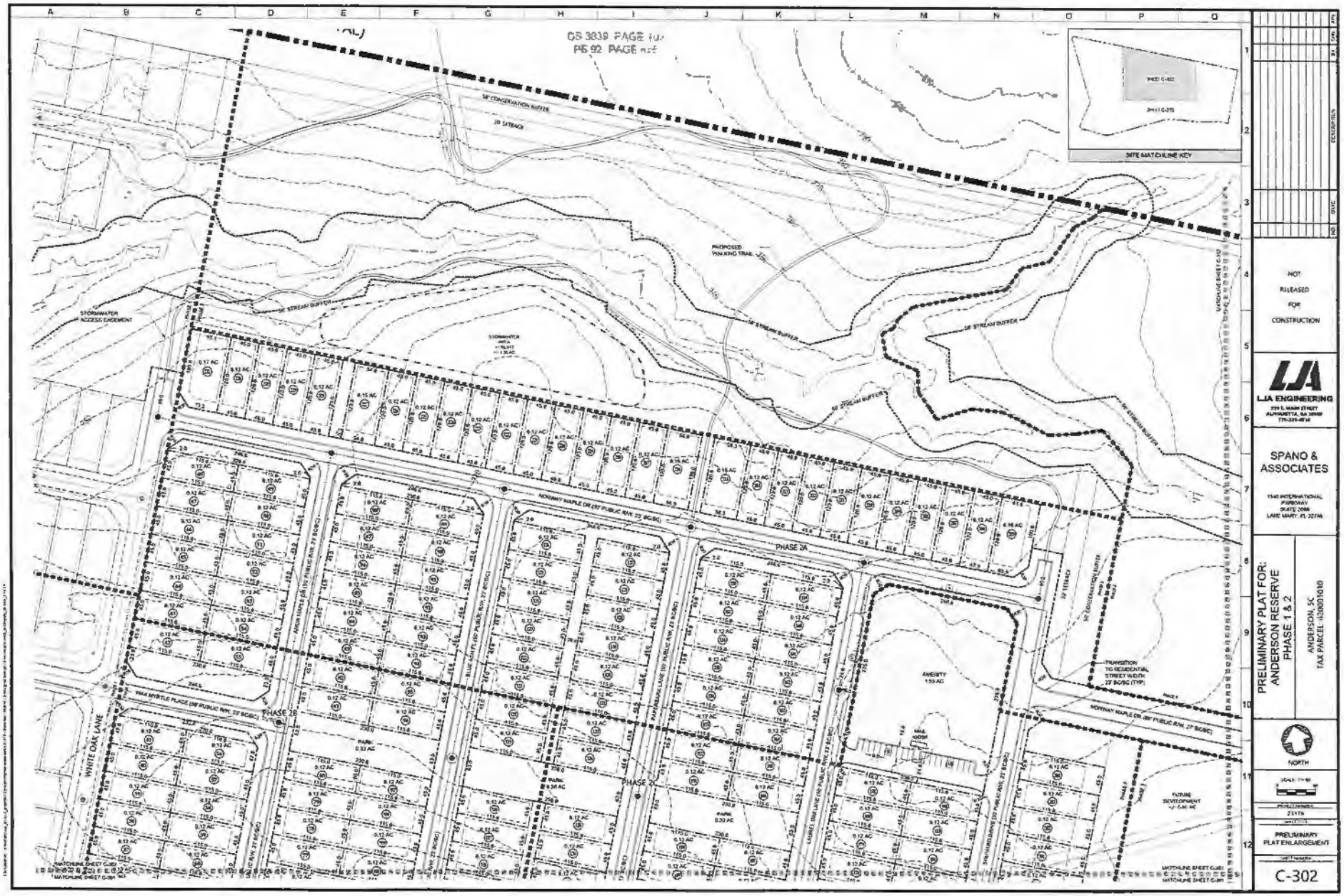


ELECTRONICALLY FILED - 2025 Aug 25 5:30 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328



ELECTRONICALLY FILED - 2025 Aug 25 5:30 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

ELECTRONICALLY FILED - 2025 Aug 25 5:30 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

ELECTRONICALLY FILED - 2025 Aug 26 4:44 PM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Hubert N. Smith, Jr. and Stanley Hix, *Plaintiffs/Appellants*, v. Anderson County Planning Commission and Spano & Associates, Inc., *Defendants/Respondents*.	IN THE COURT OF COMMON PLEAS TENTH JUDICIAL CIRCUIT Civil Action No. 2025-CP-04-00328 **SPANO & ASSOCIATES, INC.'S REPLY IN SUPPORT OF SPANO'S MOTION TO CORRECT THE RECORD AND MOTION TO LIFT AUTOMATIC STAY AND POST A SUFFICIENT BOND**

Respondent Spano & Associates, Inc. ("Spano"), respectfully replies in support of its motions to Correct the Record ("Motion to Correct")[1] and to Lift the Automatic Stay and for Appellants to Post a Sufficient Bond ("Motion for Bond")[2] (collectively, "Spano's Motions").

INTRODUCTION

Appellants Hubert N. Smith and Stanley Hix (collectively "Appellants") continue to put forth meritless arguments with the sole purpose of delaying and obstructing the development of the Anderson Reserve neighborhood. In Appellants' eleven (11) page Memorandum in Opposition to the Motion to Correct the Record and the Motion to Lift the Automatic Stay and Post a Bond ("Appellants' Memorandum"), Appellants **fail to cite a single case** while raising arguments that are demonstrably contrary to law. Appellants Memorandum is nothing but a distraction and, respectfully, should be disregarded in full.

[1] Spano's Motion to Correct, filed August 6, 2025, is incorporated herein by reference, including all arguments contained therein.

[2] Spano's Motion for Bond, filed August 6, 2025, is incorporated herein by reference, including all arguments contained therein.

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I. DEFENDANTS, INCLUDING SPANO, ARE NOT REQUIRED BY LAW TO HAVE "STANDING" TO FILE A MOTION OR TO OTHERWISE DEFEND A CASE.

"A **plaintiff** must have standing to institute an action." *Family Services Inc. v. Inman*, No. 2020-001132, 2023 WL 5096715, at *1 (Ct. App. Aug. 9, 2023) (emphasis added). Crucially, the **plaintiff—not the defendant**—needs standing to bring a case. *See, e.g., Opternative, Inc. v. S.C. Board of Medical Examiners*, 433 S.C. 405, 412, 859 S.E. 2d 263, 367 (Ct. App. 2021). Standing is related to the court's subject matter jurisdiction. *See Inman*, 2023 WL 5096715, at *1 (noting that "[a] motion to dismiss for lack of standing challenges the court's subject matter jurisdiction.") (quoting *S.C. Pub. Int. Found. v. Wilson*, 4327 S.C. 334, 340, 878 S.E.2d 891, 894 (2022)).

Constitutional standing requires: (1) the **plaintiff** must have suffered an "injury in fact"; (2) there must be a causal connection between the injury and the conduct complained of; and (3) it must be likely … that the injury will be redressed by a favorable decision." *Opternative*, 433 S.C. at 412, 859 S.E.2d at 367 (emphasis added). The injury must affect the *plaintiff* in a personal and individual way. *Sea Pines Ass'n for Protection of Wildlife, Inc. v. S.C. Dept. of Natural Resources*, 345 S.C. 594, 602 550 S.E.2d 287, 292 (2001) (emphasis added). The causal connection exists if the injury is "Fairly … trace[able] to the challenged action of the *defendant*." *Opternative*, 433 S.C. at 415, 859 S.E.2d at 415 (emphasis added).

Appellants brought this action. Spano made no counterclaims. Appellants do not challenge their own standing nor this Court's subject matter jurisdiction to hear this case. *See Compl*., at ¶¶ 4-6 ("Plaintiffs possess standing to appeal the decision of the Commission" … "This Court has jurisdiction pursuant to …"). Appellants cite no case law for their proposition that a defendant can lack standing to make a motion in a case. That is because none exists and Appellants' position is contrary to law.

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II. INCORRECTLY IDENTIFYING A RELATED ENTITY AS A PARTY IS A CLERICAL ERROR, AND CORRECTING THE RECORD IS PROPER.

South Carolina courts routinely allow amendment of the record to substitute one name for another under Rule 60, SCRCP. *See Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 240, 399 S.E.2d 779, 781 (1990). "If it later appears that the true name of the corporation is different from the name under which it is sued, **the misnomer is properly a subject of amendment**." *Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992) (emphasis added). The failure to correct the corporate name, however, does not invalidate the process or the judgment where the misnomer causes **the corporation** no prejudice. *Id.* (emphasis added).[3]

In *Tri-County Ice*, the trial judge granted a motion to amend pursuant to Rule 60(a). 303 S.C. at 239, 399 S.E.2d at 781. The trial judge held that "Palmetto Ice Company" and "P & H Company, Inc." were one and the same for purposes of the action. *Id.* The South Carolina Supreme Court affirmed, finding that the amendment was merely a correction of a clerical mistake in the name of the corporation. *Id.*, at 241. The court reasoned that it was clear that P & H Company, Inc. and its president, Helmly, were not misled to their prejudice as to the nature of the lawsuit. *Id.* quoting *Long v. Carolina Banking Co.*, 193 S.C. 225, 8 S.E.2d 326 (1939) (noting judgment would not be invalidated against corporation who is incorrectly named where corporate defendant has suffered no prejudice).

[3] *See also Turnstall v. The Lerner Shops,* 160 S.C. 557, 563, 159 S.E. 386, 388 (1931) (noting that "a mere misnomer of a corporation defendant in words and syllables is immaterial. … [A]s a general rule the misnomer of a corporation … is immaterial if it appears that it could not have been, or was not misled."); *United States v. A.H. Fischer Lumber Co.*, 162 F.2d 872 (4th Cir. 1947) (noting that "the purpose of process is to bring parties into court. If it names them in such terms that every intelligent person understands who is meant, as is the case here, it has fulfilled its purpose; and courts should not put themselves in the position of failing to recognize what is apparent to everyone else.").

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The incorrect naming of Spano is a misnomer which should be corrected as a clerical mistake or error arising from oversight pursuant to Rule 60(a), SCRCP. As far back as October 17, 2024, undersigned counsel correctly informed Appellants and the Court: "I represent Spano and Associates, Asheville, LLC. My client owns the real property at issue in the above-referenced appeal." *See* Email Correspondence attached as **Exhibit A**. Yet, **Appellants**—not Spano—incorrectly named Spano & Associates, Inc., as a party to this action. *See Compl.*, at ¶ 3. **Appellants** then incorrectly pled that Spano & Associates, Inc. "is a corporation existing in 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." *Id.* The parties proceeded to litigate this appeal as if the proper Defendant entity was named. There was no prejudice to either side from this oversight, and the arguments in this case were the same as they would have been if the proper Defendant entity was named.

Moreover, these two Spano entities are related, and neither Spano entity suffered any prejudice from this misnomer. Specifically, Ralph Spano ("Mr. Spano") is the Registered Agent of Spano & Associates, Inc. and is an Authorized Person of Spano & Associates Asheville, LLC. *Compare* Florida Secretary of State pages for Spano & Associates and for Spano & Associates Asheville, LLC, attached as composite **Exhibit B**. When Mr. Spano was served with process on behalf of Spano, Spano & Associates Asheville, LLC was not prejudiced, nor was Spano.[4]

The case law cited *infra* expresses a concern for risk of prejudice against wrongly named defendants, not *plaintiffs* who fail to name the proper defendant entity. It would be nonsensical to

[4] *See, e.g., Goodman v. Praxair, Inc.*, 494 F.3d 458, 475 (4th Cir. 2007) (concluding that "when a plaintiff alleges a comprehensible claim against one of a group of closely related and functioning business entities or corporations, the other entities in that group, barring a contrary showing, will be charged with knowledge … of the entity properly answerable to the claim.").

allow Appellants to benefit from their own mistake when neither party has suffered any prejudice. Further, Appellants cite no case law to support that their mistake was not a clerical error. As discussed *infra*, Appellants' position is contrary to law. The Motion to Correct should be granted.

III. ARGUMENTS RAISED FOR THE FIRST TIME ON APPEAL ARE WAIVED.

"It is well settled that, but for a very few exceptional circumstances, an appellate court cannot address an issue unless it was raised to and ruled upon by the trial court." *Lucas v. Rawl Family Ltd. P'ship*, 359 S.C. 505, 511, 598 S.E.2d 712, 715 (2004); *see also Bank of New York v. Salone*, No. 2011-UP-219, 2011 WL 11734330, at *3 (Ct. App. May 17, 2011) ("Because this matter was not raised to or ruled upon by the trial judge, it is not preserved for review."); *McGee v. Bruce Hosp. Syst.*, 321 S.C. 340, 437, 468 S.E.2d 633, 637 (1996). There are four basic requirements to preserving issues for appellate review. *See S.C.D.O.T. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007). The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." *Id*.

For the first time—and **after** the Final Order was issued in this Appeal on June 30, 2025—Appellants now argue that (1) Spano has no "standing" to file **any motion** in this case (even though Spano has already filed several motions without objection from Appellants); and (2) that **Appellants' own mistake** in naming Spano instead of Spano & Associates Asheville, LLC has given Appellants' a "plausible theory" for appeal.

As discussed *infra*, both of Appellants' arguments are contrary to law. Yet, even if this was not true (it is), Appellants only now raise these issues on appeal. Appellants never raised these arguments to the Court before the Final Order, and the Court never ruled on either of them. Appellants' arguments have been waived.

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IV. GRANTING THE MOTION FOR BOND IS APPROPRIATE BECAUSE APPELLANTS DO NOT HAVE ANY "PLAUSIBLE THEORY" ON THE MERITS OF THIS APPEAL.

Spano respectfully asserts that Appellants have no "plausible theory" for appeal based on the holdings of this Court and applicable law. Among other things, this Court has already found:

- "[Spano] did what they were supposed to do, and that's it … They've done it. And so I'm dismissing your appeal based on the fact that they've done what they were supposed to do." *Hubert N. Smith Jr. and Stanley Hix v. Anderson Cnty. Planning Comm'n*, No. 2024-CP-04-00975, at 17:4-17 (Anderson Cnty. Com. Pl. Feb 21, 2025);

- "Spano has exceeded [the] legal requirements in addressing this matter." *Hubert N. Smith Jr. and Stanley Hix v. Anderson Cnty. Planning Comm'n and Spano & Associates, Inc.*, No. 2025-CP-04-00328, at *6 (Anderson Cnty. Com. Pl. June 30, 2025).

Spano previously provided comprehensive briefing on this issue in Spano's Motion for Bond. In contrast, Appellants' Memorandum cites no case law and no applicable standard of law to support that they have a "plausible theory" on the merits.

CONCLUSION

For the reasons herein, Spano's Motions should be granted.

Respectfully submitted,

GALLIVAN WHITE & BOYD, P.A.

s/Carter R. Massingill
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August 26, 2025

Attorneys for Spano & Associates, Inc.

EXHIBIT A

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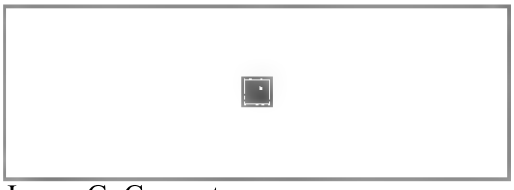
Respectfully submitted,

Jim Carpenter



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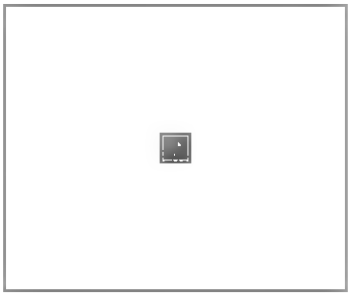

From: Carter Massingill <cmassingill@gwblawfirm.com>
Sent: Thursday, October 17, 2024 3:30 PM
To: lmcintoshlc@sccourts.org
Cc: McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>; Todd Darwin <tdarwin@holcombebomar.com>; James Carpenter <james.carpenter@carpenterlawfirm.net>; Robert Barrow <rbarrow@gwblawfirm.com>; Audrey Palmieri <apalmieri@gwblawfirm.com>
Subject: Request for Status Conference - Hubert N. Smith, Jr., et al. v. Anderson County Planning Commission, C.A. 2024-CP-04-00975 [GWB-IMANMAIN.FID1136426]

Good afternoon,

I represent Spano and Associates, Asheville, LLC. My client owns the real property at issue in the above-referenced appeal. At yesterday's hearing on the Planning Commission's motion to reconsider, it is my understanding that there was some discussion about the appellant requesting permission to access the property. Since my client is not a party to the appeal and I was not present at

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the hearing, would it be possible to schedule a brief telephonic (or video) conference with the parties, at the Court's convenience?

Please let us know if there is any additional information that counsel may provide and thank you for your consideration.

Best,
Carter

Carter R. Massingill
Partner
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EXHIBIT B

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Detail by Entity Name

Florida Profit Corporation
SPANO & ASSOCIATES, INC.

Filing Information

Document Number	P99000003710
FEI/EIN Number	59-3564812
Date Filed	01/11/1999
Effective Date	01/15/1999
State	FL
Status	ACTIVE
Last Event	REINSTATEMENT
Event Date Filed	03/13/2020

Principal Address

1540 INTERNATIONAL PARKWAY
SUITE 2000
LAKE MARY, FL 32746

Changed: 01/17/2013

Mailing Address

1540 INTERNATIONAL PARKWAY
SUITE 2000
LAKE MARY, FL 32746

Changed: 01/17/2013

Registered Agent Name & Address

SPANO, RALPH S
1540 INTERNATIONAL PARKWAY
SUITE 2000
LAKE MARY, FL 32746

Name Changed: 03/13/2020

Address Changed: 01/16/2014

Officer/Director Detail

Name & Address

Title D

SPANO, RALPH S
1540 INTERNATIONAL PARKWAY ST. 2000
LAKE MARY, FL 32746

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Florida Department of State, Division of Corporations

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Detail by Entity Name

Florida Limited Liability Company
SPANO & ASSOCIATES ASHEVILLE, LLC

Filing Information

Document Number	L18000259138
FEI/EIN Number	83-2597448
Date Filed	11/05/2018
State	FL
Status	ACTIVE

Principal Address

1667 lasbury ave
WINTER PARK, FL 32789

Changed: 04/25/2022

Mailing Address

1667 lasbury ave
WINTER PARK, FL 32789

Changed: 04/25/2022

Registered Agent Name & Address

AULD, ROBERT A
1667 lasbury ave
WINTER PARK, FL 32789

Address Changed: 04/25/2022

Authorized Person(s) Detail

Name & Address

Title AMBR

AULD, ROBERT A
1667 lasbury ave
WINTER PARK, FL 32789

Title AMBR

SPANO, RALPH
1667 lasbury ave
WINTER PARK, FL 32789

Annual Reports

Report Year	Filed Date
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2024	02/28/2024
2025	04/29/2025

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STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Hubert N. Smith, Jr. and Stanley Hix, Plaintiffs, v. Anderson County Planning Commission, and Spano & Associates, Inc. Defendant.	))))))))))))	IN THE COURT OF COMMON PLEAS IN THE 10TH CIRCUIT CASE NO: 2025-CP-04-00328 **PLAINTIFFS' REPLY MEMORANDUM IN OPPOSITION TO THE MOTION TO CORRECT THE RECORD AND THE MOTION TO LIFT THE AUTOMATIC STAY AND POST A BOND**

Statement of the Case

Plaintiffs received the Reply Memorandum of the Defendant Spano & Associates, Inc. late in the afternoon on August 25, 2025, in preparation for the Court hearing set for the next morning. Plaintiffs submit this Reply Memorandum to the Reply Memorandum of the Defendant Spano & Associates, Inc.

The Anderson County Planning Commission approved a residential subdivision named Anderson Reserve. This case is the **third** 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 to the Court of Appeals. Spano & Associates, Inc. has filed motions in this Court that relate to this appeal.

History of the Case

On October 28, 2024, Spano & Associates, Inc. filed a Motion to Intervene in Civil Action Number 2024-CP-04-00975, (the second appeal). 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. This Court relied on the representations of Spano & Associates, Inc., and entered a Form 4 Order February 7, 2025, granting the Motion to Intervene. This Court also granted the Planning Commission's Motion to Dismiss, because the Plaintiffs had failed to name and serve Spano & Associates, Inc. as a party to that appeal,

On February 13, 2025, Plaintiffs 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., Plaintiffs named Spano & Associates, Inc. as a Defendant.

In its Answer in the third case, Spano & Associates, Inc. again stated: "Spano admits . . . that Spano is . . . the owner of the Property. *Id.*, par 3.

After this Court issued a judgment in the third appeal, Spano & Associates, Inc. filed a motion to "correct the record under Rule 60 (a), SCRCP," to correct a "clerical mistake." Contrary to its multiple representations, Spano & Associates, Inc. now tells the Court that it is **not** the owner of the property; but rather "Spano & Associates, Asheville, LLC" owns the property.

Argument

I. A PARTY MUST HAVE STANDING TO MOVED TO INTERVENE.

Spano & Associates, Inc. argues in its Reply Memorandum that only a Plaintiff must plead and prove standing; and because Spano & Associates, Inc. is a Defendant, it need not plead or prove standing. However, Spano & Associates, Inc. moved to intervene in the second appeal, and

if it would be an intervener, 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. Goethe*, 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 "real party in interest." *Id*.

Spano & Associates, Inc. also filed 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. However, if Spano & Associates, Inc. is **not** the owner of the property, Spano & Associates, Inc. does not have **standing** to move the Court to lift the automatic stay or to request a bond. Plaintiffs respectfully suggest that if a party must plead and prove standing to be in intervener, it must also plead and prove standing to file a motion.

Plaintiffs respectfully suggest that 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.

II. THE COURT MAY CORRECT A MISNOMER, BUT NOT WHEN THE MISNOMER NAMES 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. Both cases involved the use of tradenames. In both cases, plaintiffs use 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. 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 named Spano & Associates, Inc. The website of the Florida Secretary of State discloses the existence of Spano & Associates, Inc. **(Exhibit 4).**

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.*

III. WHEN A PARTY IS MISNAMED, HE HAS THE 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. did more than fail to plead the misnomer in abatement. It **initiated** the misnomer and repeated the misinformation.

IV. APPELLANTS HAVE A "PLAUSIBLE THEORY" FOR APPEAL.

Spano & Associates, Inc. moves the Court to lift the automatic stay and to require a $7.5 million bond, arguing that the Plaintiffs do not have a plausible theory for appeal. These motions are not warranted or justified. Plaintiffs respectfully suggest the fact that 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, in and of itself, raises a "plausible theory" for appeal.

For these reasons, and for the other reasons stated in Appellants earlier memorandum, Appellants have presented "plausible theories" for their appeal.

CONCLUSION

First, a party must have standing to moved intervene.

Second, the Court has discretion to correct misnomer, but not when misnomer names a different corporation.

Third, when a party is misnamed, he has a duty to plead the misnomer in abatement to notify the Court and the other parties, but these defendants did not do so, but rather created the misrepresentation, repeated it throughout the litigation, and failed to correct it.

Fourth, the Court should not lift the automatic stay, or impose a substantial bond because Appellants have articulated plausible theories and issues to be determined on appeal, starting with the fact that Spano & Associates, Inc. is **not** the owner.

For all these reasons, and for the other reasons stated in Appellants earlier memorandum, Plaintiffs pray the Court to deny all the motions filed by Spano & Associates, Inc.

Respectfully submitted,

THE CARPENTER LAW FIRM, PC
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August 27, 2025

ELECTRONICALLY FILED - 2025 Sep 26 11:19 AM - ANDERSON - COMMON PLEAS - CASE#2025CP0400328

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Hubert N. Smith, Jr. and Stanley Hix, Plaintiffs, v. Anderson County Planning Commission, and Spano & Associates, Inc. Defendant.	))))))))))))	IN THE COURT OF COMMON PLEAS IN THE 10TH CIRCUIT CASE NO: 2025-CP-04-00328 **PLAINTIFFS' MOTION TO RECONSIDER THE FORM 4 ORDER ON THE BOND AND OBJECTION TO PROPOSED FORMAL ORDER ON THE BOND**

Statement of the Case

Plaintiffs move the Court to reconsider the Form 4 Order on the appeal bond, and Plaintiffs also object to the proposed formal order drafted by Defendant Spano & Associates Asheville, LLC ("Spano").

On the motion of Spano, this Court entered a Form 4 Order requiring a $100,000 appeal bond. Spano and Associates also drafted a proposed formal Order related to the appeal bond, giving the Appellants only **10 days** to come up with a $100,000 bond. There was nothing in the Form 4 Order that limited the Plaintiffs to 10 days to come up with a $100,000 bond. Further, counsel for the developer did not send the proposed formal Order to the Plaintiffs' attorney prior to sending it to the Court.

Plaintiffs attached to this Motion and Objection, the affidavit of Plaintiff Stanley Hix, his difficulty in coming up with a $100,000 bond, and doing so in 10 days, and setting out his rationale for the appeal.

History of the Case

The Anderson County Planning Commission approved a residential subdivision named Anderson Reserve. This case is the **third** 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 (April 2024); 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 to the Court of Appeals.

The developer, Spano purchased the property on May 20, 2024, **after** the plaintiffs had filed an appeal from the decision of the Planning Commission in April, 2024. This was also **after** the Plaintiffs had raised the issue of the slave graves with the Planning Commission repeatedly, starting in December 2023, and discussed the issue with counsel for Spano. Plaintiffs had also presented the affidavit of the former property owner. Plaintiffs appealed the decision of the Planning Commission, alleging that the Planning Commission had failed to adequately address the presence of slave graves.

Plaintiffs had raised the slave graves issue at the Planning Commission on multiple occasions between December 2023 and May 20, 2024. When the developer lost the vote at the Planning Commission in the March 2024 meeting, the plaintiff and a former landowner, Kenneth Eugene Rhodes, and other concerned citizens spoke with a lawyer and the engineer for the developer about the graves. Rhodes verbally gave them two areas to search for the slave graves. Rhodes also gave an affidavit to the Planning Commissioners during the next meeting in April 2024, detailing two locations where graves were present.

The developer bought the property with its eyes wide open. **Spano knew** about Plaintiffs reports and affidavit about the slave graves, and **Spano knew** about Plaintiffs' appeal; yet Spano

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bought the property anyway. Plaintiffs respectfully suggest that Spano **assumed that risk** of an adverse ruling on their investment and proceeded with the purchase of the property.

Soon after Spano's purchase, in early June 2024, without telling the plaintiffs or the Planning Commission or the Court, Spano **sent its experts** to look for slave graves. Unfortunately, Spano sent experts who usually look for underground pipes, and they did not find Graveyard Hill. Spano told the Court the results of its investigation only **after** the Court had issued a preliminary injunction in August 2024.

The developer's expert issued a report in the summer of 2024, after the Court ruled for the plaintiffs. The developer's initial report showed that there might be graves on the property, and the possible locations. The developer's surveyor found "suggested" graves in an area it had already designated as a park and said the "graves" would be protected; but the surveyor failed to find "Graveyard Hill" or any real historical, archeological sites.

If Spano had not bought the property during Plaintiffs' litigation, the developer would have no costs associated with the property, as the developer was only under contract with AnMed to buy.

Plaintiffs were not satisfied with the developer's report, and they sought the Court's permission to look on the property, with their own experts. Believing they had the permission of the developer, the Court gave the plaintiffs **10 days** to find graves on the property. Plaintiffs and their experts began to search the property. The developer, upon learning of their explorations, issued a "no trespass" notice to the Plaintiffs and their experts to impede their search. Initially, the Court ruled that it would send the case back to the Planning Commission because the developer had issued a "no trespass" notice to the Plaintiffs who were trying to find graves on the property.

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Nevertheless, Plaintiff's experts **found Graveyard Hill**. (There may be other grave sites on the property that Plaintiffs were not allowed to search for.) Although the Plaintiffs were not allowed to search the entire property, because the trespass notice, Plaintiffs were successful in finding graves on the property.

Initially, Plaintiffs sued only the Planning Commission. Several months after the case been filed. On October 28, 2024, Spano filed a Motion to Intervene in Civil Action Number 2024-CP-04-00975, (the second appeal). The Planning Commission moved to dismiss for failure to name the developer as a defendant.

In December, Plaintiffs submitted their experts' reports to the Planning Commission, showing that the Plaintiffs had found Graveyard Hill and many probable graves on the property. Then, the developer sent its own experts back out to the property and confirmed the findings of the Plaintiffs' experts. The developer adopted the findings of the Plaintiffs' experts. The developer then agreed to protect Graveyard Hill and redraw the configuration of the development.

The Planning Commission issued another order in January 2025, congratulating the developer on its good work in finding the graves on the property, even though they had been found by the Plaintiffs. This was Spano's "going above and beyond" the language of the Planning Commission.

This Court entered a Form 4 Order February 7, 2025, granting Spano's Motion to Intervene. This Court also granted the Planning Commission's Motion to Dismiss, because the Plaintiffs had failed to name and serve Spano as a party to that appeal.

Plaintiffs then appealed the January 2025 decision of the Planning Commission to this Court. This time, Plaintiffs named both the Planning Commission and the developer as defendants.

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Again, the Court dismissed the appeal. Plaintiffs are appealing the second dismissal to the Court of Appeals.

Spano also filed a motion for an order requiring Appellants to post a $7.5 million bond during the appeal. The Planning Commission did **not** file similar Motions. The Planning Commission has not asked for any kind of bond.

The developer did not plan to build houses on the property; rather, he plans to sell the entire tract to a builder or group of builders who would construct the homes on the property. The developer planned to take his money and leave.

If the developer is in a financial predicament or financial risk, it is the result of its own decision-making and risk-taking, and buying the property, knowing there were graves on the property, and attempting to sweep the issue under the rug. Plaintiff should not be charged with financial responsibility for the business decisions of the developer.

Plaintiffs have a **right to appeal** the decision of the Planning Commission. Requiring this plaintiff to post a $100,000 bond, in his financial circumstances, is a financial hardship on his ability to exercise his right to appeal the decision of the Planning Commission.

Plaintiff/Appellant Stanley Hix is attempting to come up with a $100,000 bond. As he states in his affidavit, he is retired and living on a fixed income. He does own a house, and he is looking into putting his house up as collateral for the Court's mandated $100,000 bond.

CONCLUSION

The developer bought the real estate **after** Plaintiffs filed their initial appeal of the decision of the Planning Commission, and **after** the Plaintiff had disclosed the presence of slave graves. The developer bought the property with their eyes wide open, and they assumed the risk of the

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litigation. Accordingly, they should not be heard to complain about potential damages resulting from the litigation.

Requiring a $100,000 bond is a substantial financial hardship to Stanley Hix, who is retired and living on a fixed income.

For all these reasons, Plaintiffs pray the Court to lower the amount of the bond to a reasonable amount that the Plaintiff can afford, and to grant the Plaintiff at least 30 days to come up with the bond.

Respectfully submitted,

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September 26, 2025

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	IN THE 10TH CIRCUIT
Hubert N. Smith, Jr. and Stanley Hix, Plaintiffs,	)	CASE NO: 2025-CP-04-00328
v.	)	**AFFIDAVIT OF STANLEY HIX**
Anderson County Planning Commission, and Spano & Associates, Inc. Defendant.	)	

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. I am retired, and I am on a fixed income. The $100,000 bond is a hardship for me to come up with.
3. If the court requires a bond of me, I will have to secure one by putting up my house as collateral for the bond.
4. For the court's information, as a practical matter, I plan to be on vacation October 8-19, and I asked the court to take that into account in setting the deadline for when I must post a bond and deal with a bond company.
5. I also submit this affidavit to explain the basis and reasons for our appeal.
6. My reason for the appeal is the Planning Commission did not consider the evidence of the cemetery we found, but instead they voted to approve the old map. They did not address the four points in your court order for consideration. The attorney for the developer who was not in the Executive session testified they addressed the four points of your order. They also failed to acknowledge the effort, time, and money spent to find the enslaved graves. They instead praised the developer for going "above and beyond in searching for the enslaved graves, nothing about my efforts in actually finding the cemetery of 14 verified graves by Ground Penetrating Radar (GPR). A more thorough investigation is required to find them all in that location.
7. Upon information and belief, a second cemetery has not been located as described in the affidavit of Eugene Rhodes.

8. 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.

9. 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.

10. The Planning Commission voted to approve the **wrong map**, and they **reaffirmed** their vote from April 2024, which also **did not protect Graveyard Hill**.

11. Pursuant to chapter 24 of the Anderson County Code, a new subdivision map goes to the planning staff to make sure it complies with all the land use rules for Conservation Subdivisions. The Code requires that before the Planning Commission reviews the plat, "the subdivision administrator shall review the plat." Anderson County Code § 24-335 (2). The developer should have archaeological and historical sites in "open space" according to Chapter 24-401 section 7.

12. Upon information and belief, the developer's new map was not given to the subdivision administrator in time so that the subdivision administrator could confirm whether the new map complied with all the requirements of Section 24-336. One of the requirements is that 50% of the lots shall directly front open spaces or face open spaces from across a subdivision street, unless a variance is granted by the Planning Commission. There was no variance submitted for this requirement for each phase.

13. Upon information and belief, the Planning Commission did not consider the new map to formalize the approval of protecting the cemetery that was found. Instead, they voted to reaffirm the old map

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that did not protect the cemetery from development. The attorney for the county did not quote any ordinance or Chapter 24 rule that allows an administrator to approve a brand-new map.

14. The developer Spano and Associates did a study twice and found no enslaved graves on the historical site of Rivoli Plantation during the summer of 2024. Suspected graves they found were going to be fenced off in a park, but upon their second study in December 2024 they found them not to be graves via "trenching" instead of Ground Penetrating Radar (GPR).

15. In December 2023, I informed the Planning Commission that the previous owners knew of cemeteries of enslaved people on the property. Phase II of the property was denied by a vote of 5 to 2. The developers appealed to the 10th circuit court so they could come back before the Planning Commission multiple times to get a positive vote. Despite this information, the owners and developers with a contract to buy did not look for or hire an archeological company to find the enslaved graves. They came back to the planning committee and again after Phase II was denied by a vote of 4 to 3.

16. After the March Meeting, community members, the previous owner Eugene Rhodes, and I spoke to the engineer and a lawyer Duffy Powers of Galvin White and Boyd law firm in the old courthouse hallway about the cemeteries. Mr. Rhodes verbally told them two places where the graves were on the property. No search was carried out after this discussion.

17. In April 2024, Phase II was joined to Phase I, which had already been approved. Phase I was not under appeal at this time. Phase I would have had to start over in May 2024, because a year had passed. In the minutes of this meeting, Carter Massingale told the planning committee they had asked the community to come forward with any information about the graves. He told the Planning Committee that no one had come forward. May Meeting Minutes, Page 15 lines 12 – 24. "But we have not heard from anybody since then; nobody is reached out to us. So, at the same time, we're here today with the same amount of evidence about that, which is none." This totally disregards the discussion that we had after the March meeting about the location of the cemeteries by Mr. Rhodes and the affidavit presented to them and the Planning Commission about the locations.

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18. In April 2024, Phase I and II was "not denied" by a vote of 2 to 4. We appealed the decision to the 10th Circuit Court within 30 days of the approval by the Planning Commission as is our right.

19. Spano and Associates purchased the property even though the property was under appeal. Therefore, they understood the risks of the appeal process and took the risk of a delay.

20. Spano and Associates hired S&ME in early June 2024 to look for cemeteries and enslaved graves. They found no clear evidence of enslaved graves. They did not present this evidence to the county, nor did they make a motion to intervene in the court case, even though they knew it was under litigation. Only after the Court indicated it was sending it back, and the Court gave me 10 days to find evidence, did they move to intervene and to issue trespass notice to me to keep me off the property so I could not find any evidence. They also presented this study to the court via the county's attorney. This is further evidence that they knew of the appeal and did not move to intervene when they had the opportunity. Any delay is of their own making during the appeal process.

21. Within 10 days our experts found evidence, and later we presented it to the county and Spano in December 2024, before the Planning Commission's Consent vote. We presented this evidence because they would not allow me to present it to the planning commission. The item was pulled from the agenda and rescheduled for the January 14 meeting for another consent vote. Neither the public nor the plaintiffs were given the opportunity to speak to the Planning Commissioners about the evidence we found.

22. Upon information and belief, developers come back multiple times before the Planning Commissioners and argue their points. Community members who appeal are not granted the same courtesy.

23. A new map was presented to the Administration staff on January 7. The planning commission met on January 14 in executive session and had the opportunity to vote on the new map that protected the enslaved cemetery. They instead voted to re-approve the old map. No input was allowed from the appellant to discuss their findings.

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24. Upon information and belief, the Land Administrator does not have the authority to approve a new map that significantly alters the approved map. Roads were changed and altered, lots eliminated, and new roads were added. Ordinarily such changes go back before the Planning Commissioners for approval. Since this map was done by a different company with major changes, it should have been back before the Planning Commissioners for a vote and testimony from the Land Administrator.

25. Instead, counsel for the County met in Executive Session with the Planning Commission and made a presentation concerning possible gravesites in Anderson Reserve.

26. Spano and Associates produce an affidavit from Ralph Spano, the owner, saying the cemetery would be protected by the HOA. However, the affidavit presented to the court was not signed by Ralph Spano. It was blank. It is my belief that it is not binding on the county or court that the cemetery will be protected. At that time, it was believed that Spano and Associates would be developing the property and could make these covenants binding.

27. Spano and Associates now claim damages to its intention to "sell" the property for development and are being "delayed". On information and belief, once they sell the property with the map currently approved by the Planning Commission, the new owner will then attempt to remove the graves to a more suitable location, so they can develop the lots that were originally approved (on the graves) and currently voted on twice and approved. Upon information and belief, this is allowed under SC code of Laws (cemeteries) **SECTION 27-43-10.** Notice of proposed removal; due care required of SC Code of Laws.

28. Upon information and belief, the Grave Sites protective (GSP) covenants of Anderson Reserve by the current owners are **not dated nor signed** as presented to this court. Therefore, it is not legally binding and can be modified or ignored by the new owner of the property after Spano and Associates sell the property.

29. Upon information and belief, the Grave Site Protective covenant is referred to as "Potential Grave Site to be protected" not "Protected Grave Site". The word Potential does not reflect the actual

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grave sites found, but rather their "potential" of being found. The definition of the word "potential" is "Capable of being but not yet in existence; latent or undeveloped". Merriam-Webster defines it as "existing in possibility: capable of development into actuality."

30. One of the Recitals of the Potential Gave Site (PSG) is that "There is no obligation to allow an amendment." Recital number 2.

31. Recital number 3 states "No Rights Granted to the General Public" (rights of ownership, entry or use of the Potential Grave Site). Descendants currently found or found in the future would have no right to enter the PGS to pay respects to their ancestors.

32. For all these reasons we are appealing our case to the Court of Appeals.

Further the Affiant saith naught.

Stanley Hix, Plaintiff/Appellant

Subscribed and sworn to before me
This 26 day of September, 2025.

WILLIAM GALLOWAY NOTARY PUBLIC WAKE COUNTY, NC

Notary Public, State of North Carolina
My commission expires: 02/13/2026

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COUNTY OF ANDERSON	)	IN THE 10TH CIRCUIT
Hubert N. Smith, Jr. and Stanley Hix, Plaintiffs,	)	CASE NO: 2025-CP-04-00328
v.	)	**Notice of Posting Bond**
Anderson County Planning Commission, and Spano & Associates, Inc. Defendant.	)	

NOW COMES the Plaintiff Stanley Hix, by his undersigned attorney, and notifies the Court that he has posted a $100,000 bond, as required by the Court Order, as shown by the attached receipt from the Clerk of Court.

Respectfully submitted,

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October 3, 2025