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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

The Honorable 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.,

Defendants,

of whom

Spano & Associates, Inc. is

Respondent.

FINAL BRIEF OF RESPONDENT SPANO & ASSOCIATES, INC.

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STATEMENT OF ISSUES ON APPEAL

1. IS APPELLANTS' ARGUMENT THAT THE ANDERSON COUNTY PLANNING COMMISSION'S JANUARY 14, 2025 DECISION "FAILED TO MEET THE THRESHOLD OF RESPECT AND CARE FOR REMAINS AND BURIAL GROUNDS DEMANDED BY SOUTH CAROLINA COMMON LAW" PRESERVED FOR THIS COURT'S REVIEW, WHERE APPELLANTS' COMMON-LAW ARGUMENT WAS NOT RAISED TO OR RULED UPON BY THE TRIAL COURT NOR WAS IT MENTIONED IN APPELLANTS' MOTION TO ALTER OR AMEND?

2. IS THERE ANY EVIDENCE SUPPORTING THE TRIAL COURT'S FINDING THAT THE ANDERSON COUNTY PLANNING COMMISSION'S JANUARY 14, 2025 DECISION APPROVED A REVISED PLAT THAT IDENTIFIED THE GRAVESITE AREA TO BE PROTECTED AND ACCOMMODATED THE FINDINGS OF APPELLANTS' OWN EXPERTS, RATHER THAN THE ORIGINAL PLAT AS ARGUED BY APPELLANTS?

3. DID APPELLANTS FAIL TO PRESERVE THEIR ARGUMENT THAT THE ANDERSON COUNTY PLANNING COMMISSION ABUSED ITS DISCRETION AND FAILED TO REQUIRE COMPLIANCE WITH S.C. CODE ANN. §§ 16-17-600 & 27-43-10 FOR THIS COURT'S REVIEW, WHERE THE TRIAL COURT DID NOT EXPLICITLY RULE ON APPELLANTS' STATUTORY ARGUMENT AND APPELLANTS FAILED TO REQUEST SUCH A RULING IN THEIR MOTION TO ALTER OR AMEND?

4. IS THERE ANY EVIDENCE SUPPORTING THE TRIAL COURT'S FINDING THAT THE ANDERSON COUNTY PLANNING COMMISSION'S JANUARY 15, 2025 DECISION APPROVING THE REVISED PLAT WAS NOT IN VIOLATION OF ANDERSON COUNTY ORDINANCE § 24-401(7) OR § 24-367'S REQUIREMENTS RELATING TO PUBLIC COMMENT OR A PUBLIC HEARING REGARDING A FINAL SUBDIVISION PLAT, WHERE THE TRIAL COURT FOUND THE REVISED PLAT SHOWED THE PROTECTED GRAVESITE AREA WILL BE IN OPEN SPACE IN COMPLIANCE WITH §24-401(7) AND FOUND THAT §24-367 DOES NOT MANDATE PUBLIC COMMENT OR A PUBLIC HEARING FOR SUBSEQUENT REVISIONS TO PRELIMINARY PLATS?

5. DID APPELLANTS FAIL TO PRESERVE THEIR ARGUMENT THAT THE TRIAL COURT ERRED IN FAILING TO FIND THAT THE ANDERSON COUNTY PLANNING COMMISSION ABUSED ITS DISCRETION BY VIOLATING ANDERSON COUNTY ORDINANCES §§ 24-335(2), 24-336, 24-331(3), 24-331(5), AND 24-367'S REQUIREMENT THAT A PRELIMINARY PLAT IS NULL AND VOID IF A FINAL SUBDIVISION PLAT IS NOT SUBMITTED WITHIN ONE YEAR OF APPROVAL OF THE PRELIMINARY PLAT, WHERE THE TRIAL COURT DID NOT SPECIFICALLY RULE ON APPELLANTS' ARGUMENTS BASED ON THESE ORDINANCES AND APPELLANTS FAILED TO REQUEST SUCH RULINGS IN THEIR MOTION TO ALTER OR AMEND?

6. DID APPELLANTS FAIL TO PRESERVE THEIR ARGUMENT THAT RESPONDENT SPANO & ASSOCIATES, INC. LACKED STANDING TO INTERVENE AND TO MOVE TO CORRECT THE RECORD, WHERE APPELLANTS FAILED TO APPEAL THE TRIAL COURT'S FEBRUARY 21, 2025 ORDER GRANTING RESPONDENT SPANO & ASSOCIATES, INC.'S MOTION TO INTERVENE AND THE TRIAL COURT DID NOT RULE ON STANDING IN ITS ORDER GRANTING MOTION TO CORRECT THE RECORD AND APPELLANTS DID NOT FILE A RULE 59(E), SCRCP, MOTION ASKING THE TRIAL COURT TO RULE ON THE ISSUE?

7. DID THE TRIAL COURT ABUSE ITS DISCRETION IN GRANTING RESPONDENT SPANO & ASSOCIATES, INC.'S RULE 60(A), SCRCP, MOTION TO CORRECT THE RECORD, WHERE ALL PARTIES PARTICIPATED IN PROCEEDINGS AS IF THE CORRECT ENTITY HAD BEEN NAMED AND THERE WAS NO PREJUDICE TO EITHER SIDE?

STATEMENT OF THE CASE

On April 9, 2024, the Anderson County Planning Commission ("Commission") approved the preliminary plat for the Anderson Reserve subdivision project ("Neighborhood"). An appeal was filed on May 7, 2024 by two adjacent landowners named Hubert N. Smith, Jr. and Stanley Hix ("Appellants") against the Commission asserting the following grounds: 1) failure to comply with the requirements of S.C. Code Ann. § 27-43-10 related to the removal of graves from abandoned burial grounds; 2) violation of the South Carolina Freedom of Information Act's requirements related to published agendas for public meetings; 3) violation of the Freedom of Information Act by making the April 9, 2024 decision outside of a public meeting; 4) a commissioner's alleged conflict of interest; 5) violation of Anderson County ordinance § 24-367; and 6) the alleged failure of two commissioners to fulfill their duty to participate in the vote. [May 7, 2024 Complaint] (R. pp. 50-60).

On August 21, 2024, a hearing was held before the Honorable R. Lawton McIntosh. On August 30, 2024, the Court issued an Order denying all of Appellants' causes of action except for the alleged failure to comply with the requirements of S.C. Code Ann. § 27-43-10, on which basis the Court reversed the Commission's approval and remanded the matter back with instructions to consider and establish requirements for the developers to determine whether slave graves exist on the property and to encourage the Commission to allow Appellants to conduct testing on the property. [August 30, 2024 Order] (R. pp. 1-4). The Commission filed a Motion to Alter or Amend pursuant to Rule 59(e), SCRCP, on September 9, 2024, arguing that the issue on remand was moot because Respondent Spano & Associates, Inc. ("Spano") had contracted with third party engineering firm S&ME to complete a site visit and geophysical survey for the Neighborhood and

prepare a report regarding possible slave graves on the property. [September 9, 2024 Motion to Alter or Amend] (R. pp. 112-115).

A motion hearing was held before the Honorable R. Lawton McIntosh on October 16, 2024, and the Court issued a Form 4 Order the same day stating that the matter was continued by the parties' consent. [October 16, 2024 Order]. Spano, as the owner of the property in dispute, filed its Motion to Intervene in the appeal on October 28, 2024 [Motion to Intervene] (R. pp. 142-146). On October 29, 2024, the Commission filed a Motion to Dismiss on the grounds that Appellants failed to name the "permittee and property owner, Spano & Associates Asheville, LLC" as a party to the appeal, despite Spano being a necessary party to the proceeding before the Commission. [Motion to Dismiss] (R. pp. 147-149). The Commission argued that the appeal was untimely because Appellants failed to serve Spano with the appeal documents within thirty days of the mailing of the Commission's approval. On November 20, 2024, the Court issued a formal Order denying the Commission's Motion to Alter or Amend, remanding the matter to the Commission, and holding Spano's Motion to Intervene in abeyance pending the remand. [November 20, 2024 Order] (R. pp. 9-12).

On January 14, 2025, after considering an updated report and revised preliminary plat from Spano in addition to reports from Appellants, the Commission unanimously voted to find that Spano "went above and beyond to determine if there were any grave sites on the property" and reaffirmed the April 9, 2024 decision approving Spano's application for approval of the preliminary plat for the Neighborhood. [January 14, 2025 Commission Meeting Minutes] (R. p. 188, line 20-p. 189, line 27).

On February 6, 2025, a hearing on Spano's Motion to Intervene and the Commission's Motion to Dismiss was held before the Honorable R. Lawton McIntosh, during which the Court

granted both Motions and stated that Respondents had "done what they were supposed to do" on remand and "went above and beyond what was necessary." [*See* February 6, 2025 Hearing Transcript 14:2; 17:4-17] (R. p. 448, line 14; p. 451, lines 4-17). On February 13, 2025, Appellants filed an appeal of the Commission's January 14, 2025 decision ("Second Appeal"), asserting the following grounds: failure to comply with the requirements of S.C. Code Ann. § 27-43-10 related to the removal of graves from abandoned burial grounds; failure to hold public hearings; failure to "actually review and consider the letter and exhibits submitted by the Appellants"; failure to make documents submitted by Spano and Appellants publicly available; violation of Anderson County ordinance § 24-367; and violation of Anderson County ordinance § 24-401(7). [February 13, 2025 Complaint] (R. pp. 77-85). The Court issued a formal Order on February 21, 2025 granting Spano's Motion to Intervene and the Commission's Motion to Dismiss, ruling that the appeal was "hereby dismissed with finality." [February 21, 2025 Order] (R. pp. 16-21).

A hearing on the merits of the Second Appeal was held before the Honorable R. Lawton McIntosh on June 4, 2025, and the Court issued a Form 4 Order denying the appeal on June 5, 2025. [June 5, 2025 Order] (R. pp. 22-24). On June 10, 2025, the Court issued a formal Order dismissing the second appeal and affirming the Commission's January 2025 decision. [June 10, 2025 Order] (R. pp. 25-31). Appellants filed a Motion to Alter or Amend on June 24, 2025 asking the Court to omit "several personal and petty remarks" from the formal Order. [June 24, 2025 Motion to Alter or Amend] (R. pp. 286-288). On June 30, 2025, the Court entered a Form 4 Order denying Appellants' Motion to Alter or Amend as well as a formal Order reaffirming the Commission's January 14, 2025 decision and dismissing the Second Appeal, which mirrored the June 10, 2025 order except for the removal of the "remarks" requested by Appellants. [June 30, 2025 Form 4 Order; June 30, 2025 Order] (R. pp. 39-41; pp. 32-38). Appellants filed their Notice

of Appeal to this Court on July 28, 2025, identifying these four June 2025 Orders. [July 28, 2025 Notice of Appeal].

Spano filed two Motions on August 6, 2025: a Motion to Correct the Record under Rule 60(a), SCRCP, and a Motion to Lift Automatic Stay and Order Appellants to Post Sufficient Bond During the Pendency of Their Appeal. [Motion to Correct the Record; Motion to Lift Stay and Impose Bond] (R. pp. 317-319; pp. 289-302). Spano's Motion to Correct the Record asked the Court to correct a clerical mistake in Orders and other parts of the record by issuing an order establishing that all references to "Spano & Associates, Inc. shall be treated as references to Spano & Associates Asheville, LLC" in the first and second appeals because Spano & Associates Asheville, LLC holds the fee simple interest in the Neighborhood and is the correct ownership entity.

Following oral arguments on August 27, 2025, the Court issued its Form 4 Order granting Spano's Motion to Correct the Record. [August 27, 2025 Order] (R. pp. 42-44). On September 4, 2025, a formal Order was issued finding 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." [September 4, 2025 Order] (R. pp. 45-48). Appellants did not file a Motion to Amend or Alter the August 27, 2025 and September 4, 2025 Orders granting Spano's Motion to Correct the Record. Appellants filed their second Notice of Appeal to this Court on September 29, 2025, identifying the August 27, 2025 and September 4, 2025 Orders. [September 29, 2025 Notice of Appeal].

STANDARD OF REVIEW

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)

(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 trial court must "refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision." *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 234, 642 S.E.2d 565, 567 (2007). The "any evidence" standard of review is the most deferential standard of review recognized by South Carolina's courts, and planning commissions receive this deference because of the South Carolina Supreme Court's recognition of "the legislature's intent in granting a planning commission broad discretion in this area." *Kurschner*, 376 S.C. at 173-74, 656 S.E.2d at 351. A planning commission decision will be overturned only if it is "based on errors of law," if "there is no legal evidence to support it," if the commission "act[ed] arbitrarily or unreasonably," or if the commission "abused its discretion." *See Kurschner*, 376 S.C. at 174, 656 S.E.2d at 351 (citing *Peterson Outdoor Advert. v. City of Myrtle Beach*, 327 S.C. 230, 235, 489 S.E.2d 630, 633 (1997)).

The Court of Appeals will uphold the trial court's decision "unless it was based on an error of law or is not supported by the evidence." *Floyd*, 403 S.C. at 466, 744 S.E.2d at 166 (citing *Kurschner*, 376 S.C. at 174, 656 S.E.2d at 351). The Court of Appeals "applies the same standard of review as the circuit court" when reviewing a decision of a county planning commission. *See Venture Eng'g for DT LLC v. Horry Cnty. Zoning Bd. of Appeals*, 433 S.C. 419, 426, 858 S.E.2d 638, 642 (Ct. App. 2021).

To be preserved for appellate review, the circuit court must rule on an issue or argument or the appealing party must include it in their Rule 59(e), SCRCP, motion. *Floyd*, 403 S.C. at 479, 744 S.E.2d at 167 (citing *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 23-24, 602 S.E.2d 772, 779-80 (2004) (stating that an issue must be raised to and ruled upon by the trial court in order to be preserved for appellate review, and that a party must file a Rule 59(e), SCRCP, motion to preserve

an issue the trial court fails to rule on)); *see also Williams v. Jeffcoat*, 444 S.C. 224, 237, 906 S.E.2d 588, 595 (2024) (lack of standing argument not preserved for appellate review where master-in-equity did not rule on issue and appellant did not move for reconsideration and ask the master to rule on standing); *Bugsy's, Inc. v. City of Myrtle Beach*, 340 S.C. 87, 96, 530 S.E.2d 890, 894 (2000) (issue not preserved for appellate review where master-in-equity did not rule on issue in final order and appellant's post-trial motion "did not request the master-in-equity specifically rule on this issue."); *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

When a trial court "makes a general ruling on an issue, but does not address the specific argument raised by a party, that party must make a Rule 59(e) motion asking the trial court to rule on the issue in order to preserve it for appeal." *Cowburn v. Leventis*, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005) (emphasis added) (citing *Noisette v. Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991)); *see also Smith v. NCCI, Inc.*, 369 S.C. 236, 247-48, 631 S.E.2d 268, 274 (Ct. App. 2006) ("When a trial court does not explicitly rule on an argument raised, and the appellant makes no Rule 59(e), SCRCP, motion to obtain a ruling, the appellate court may not address the issue.") (emphasis added) (citing *Noisette*, 304 S.C. at 58, 403 S.E.2d at 124); *Goddard v. Fairways Dev. Gen. P'ship*, 310 S.C. 408, 412, 426 S.E.2d 828, 831 (Ct. App. 1993) ("Issues on which the trial court never ruled and which were not raised in post-trial motion are not properly before this court.") (citing *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 494, 392 S.E.2d 789, 793 (1990)).

ARGUMENT

I. APPELLANTS' ARGUMENT THAT THE COMMISSION'S JANUARY 14, 2025 DECISION "FAILED TO MEET THE THRESHOLD OF RESPECT AND CARE FOR REMAINS AND BURIAL GROUNDS DEMANDED BY SOUTH CAROLINA COMMON LAW" HAS NOT BEEN PRESERVED FOR THIS COURT'S REVIEW

BECAUSE APPELLANTS' COMMON-LAW ARGUMENT WAS NOT RAISED TO OR RULED UPON BY THE TRIAL COURT NOR WAS IT MENTIONED IN APPELLANTS' MOTION TO ALTER OR AMEND.

It is a well-established principle under South Carolina law that an issue or argument "cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *See Wilke*, 330 S.C. at 76, 497 S.E.2d at 733; *see also Elam*, 361 S.C. at 23-24, 602 S.E.2d at 779-80; *Goddard*, 310 S.C. at 412, 426 S.E.2d at 831 (citing *Cox*, 301 S.C. at 494, 392 S.E.2d at 793). Because Appellants raise their arguments based on what they describe as "the threshold of respect and care for remains and burial grounds demanded by South Carolina common law" for the first time in their Initial Brief, they have failed to preserve their common law arguments for appellate review. [Appellants' Initial Brief p. 11]. Thus, the issues raised therein are not properly before this Court.

Appellants begin the first numbered Argument section of their Initial Brief by declaring that "not only the statutory law but also the common law of South Carolina set the context of the case at bar and establish the level of respect and the presumption of continuing care of burial grounds and remains as matters of sacred and inviolate trust." [*Id.*] Unfortunately for Appellants, only the arguments and issues raised to and either ruled upon by the trial court, or made the subject of a Rule 59(e), SCRCP, motion, set the context of this appeal. *See Wilke*, 330 S.C. at 76, 497 S.E.2d at 733; *see also Elam*, 361 S.C. at 23-24, 602 S.E.2d at 779-80; *Goddard*, 310 S.C. at 412, 426 S.E.2d at 831 (citing *Cox*, 301 S.C. at 494, 392 S.E.2d at 793). Thus, before this Court can properly consider Appellants' arguments based on South Carolina common law, it must examine the lower court filings.

Appellants' Complaint and Appeal from the Commission's January 14, 2025 decision, filed February 13, 2025, asserts that S.C. Code Ann. § 27-43-10 "requires certain statutory processes

and procedures in relation to graves and burial grounds" and alleges that Spano "failed to comply with the statutory prerequisites for dealing with graves and burial sites." [February 13, 2025 Complaint] (R. p. 80, ¶¶ 21-22) (emphasis added). There is no mention of the "threshold of respect and care for remains and burial grounds demanded by South Carolina common law," and there are no citations to the cases Appellants rely upon in raising the common-law argument in their Initial Brief before this Court.

Similarly, Appellants' Memorandum of Law in Support of their appeal from the Commission's January 14, 2025 decision, filed June 3, 2025, asserts that "[t]he Commission failed to protect the burial grounds, as required by the statute," citing S.C. Code Ann. § 16-17-600, and that "[t]he Commission failed to require compliance with the statutory prerequisites for dealing with graves and burial sites," citing S.C. Code Ann. § 27-43-10. [Appellants' Memorandum of Law in Support p. 9] (R. p. 269) (emphasis added). There is no mention of the "threshold of respect and care for remains and burial grounds demanded by South Carolina common law," and there are no citations to the cases Appellants rely upon in raising the common-law argument in their Initial Brief before this Court.

Since Appellants did not mention their common-law arguments in either their Complaint appealing the Commission's January 14, 2025 decision or their Memorandum of Law in Support, it logically follows that the trial court's order denying the appeal, dated June 10, 2025, is silent on the issue. [June 10, 2025 Order] (R. pp. 25-31). On June 24, 2025, Appellants filed a Motion to Alter or Amend the trial court's June 10, 2025 order. [June 24, 2025 Motion to Alter or Amend] (R. pp. 286-288). Appellants took issue with what they characterized as "several personal and petty remarks" contained within the order "proposed by opposing counsel," and Appellants' Motion only asked the court to alter or amend the order by "omitting the following remarks" they took issue

with. [*Id.*] (R. p. 286). The trial court's June 30, 2025 order omitted the remarks as requested by Appellants but was otherwise identical to the June 10, 2025 order. [June 30, 2025 Order] (R. pp. 32-38). Appellants' Motion to Alter or Amend did not ask the trial court to address or rule on any issues or arguments, much less the specific common-law arguments that Appellants raised for the first time in their Initial Brief before this Court.

Because the common-law arguments contained in Appellants' Initial Brief were not raised to or ruled upon by the trial court, and Appellants' Motion to Alter or Amend did not ask for a ruling, Appellants have failed to preserve their common-law arguments for this Court's review. Thus, the issues raised therein are not properly before this Court. *See Wilke*, 330 S.C. at 76, 497 S.E.2d at 733; *see also Elam*, 361 S.C. at 23-24, 602 S.E.2d at 779-80; *Goddard*, 310 S.C. at 412, 426 S.E.2d at 831 (citing *Cox*, 301 S.C. at 494, 392 S.E.2d at 793).

II. THERE WAS AMPLE EVIDENCE SUPPORTING THE TRIAL COURT'S FINDING THAT THE COMMISSION'S JANUARY 14, 2025 DECISION APPROVED A REVISED PLAT THAT IDENTIFIED THE GRAVESITE AREA TO BE PROTECTED AND ACCOMMODATED THE FINDINGS OF APPELLANTS' OWN EXPERTS, RATHER THAN THE ORIGINAL PLAT AS ARGUED BY APPELLANTS.

Appellants have repeatedly declared throughout the trial court proceedings, and now do so once again before this Court in Appellants' Initial Brief, that the Commission's January 14, 2025 decision "'reaffirmed' the drawing dated March 21, 2024, and not the developer's new drawing from December 2024." [Appellants' Initial Brief p. 14; *see also* Appellants' Memorandum of Law in Support p. 6 ("The Commission approved the wrong drawing; they approved the drawing dated March 21, 2024, and not the developer's new drawing from December 2024.") (R. p. 266)]. Appellants now ask this Court to reverse the "Commission's decision approving the old map" because it was "an abuse of discretion, in violation of South Carolina law." [Appellants' Initial Brief p. 15]. The relevant portion of Appellants' Initial Brief matches the relevant portion of

Appellants' Memorandum of Law in Support almost verbatim, and Appellants fail to acknowledge or attempt to rebut the trial court's rejection of the arguments they reassert here. [*Compare* Appellants' Initial Brief pp. 14-15 *with* Appellants' Memorandum of Law in Support pp. 6-7 (R. pp. 266-267)]. This Court should affirm the trial court's findings that the Commission approved a revised map and that "Appellants' argument concerning the [Commission]'s approval of the 'wrong map' to be without merit." [June 30, 2025 Order p. 5] (R. p. 36).

The only apparent basis Appellants have for their assertion that the Commission did not approve a new map on January 14, 2025 is Appellant Stanley Hix's own affidavit, in which he states that he "was concerned about which map the Planning Commission approved" and "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." [Hix Affidavit ¶ 3] (R. p. 275). Appellant Hix attested that about six weeks later, "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.'" [*Id.* at ¶ 4] (R. pp. 275-276). At no point has Appellant Hix ever provided the parties or the trial court with the specific text or wording used in his FOIA request. Thus, based solely on the apparent response to his FOIA request, Appellant Hix declared that the "Commission voted to approve the wrong map, and they reaffirmed their vote from April 2024, which also did not protect Graveyard Hill," a conclusory statement that Appellants have continued to repeat despite ample evidence to the contrary. [*Id.* at ¶ 5] (R. p. 276).

As the trial court made clear in its June 10, 2025 and June 30, 2025 orders rejecting the identical argument Appellants make yet again before this Court, the "current plat, which was revised to accommodate the findings of Appellants' own experts, was submitted to the

[Commission] prior to the January 2025 Decision." [June 10, 2025 Order p. 4; June 30, 2025 Order p. 4] (R. p. 28; p. 35). The trial court further found that the revised plat "is the current version on file with [Commission] staff and has worked its way through the ordinary course of several iterations of review and comments by the appropriate Anderson County departments," which was confirmed by "the [Commission] staff present at the June 4, 2025 hearing." [June 10, 2025 Order p. 5; June 30, 2025 Order p. 4] (R. p. 29; p. 35). The transcript of the June 4, 2025 hearing reflects that Alesia (incorrectly named as Felicia in the transcript) Hunter, the administrator for planning with the Commission, was in attendance and answered the trial court's question about whether the revised plat protected graves as follows: "Yes, your Honor. It does." [June 4, 2025 Hearing Transcript 15:13-15] (R. p. 468, lines 9-15). Ms. Hunter confirmed the trial court's questions regarding whether the revised map is "what they have to build by, and that is what's in force and effect." [*Id.* at 17:15-20; 18:16-18] (R. p. 470, lines 15-20; p. 471, lines 16-18).

Given the ample evidence in the record supporting the trial court's finding that the Commission approved a revised plat, Appellants' request for this Court to reverse the "Commission's decision approving the old map" amounts to no more than an improper request for this Court not only to weigh the evidence rather than apply the "any evidence" standard, but also to effectively invert the standard and reverse the Commission's decision if there was "any evidence" in the record opposing it, such as Appellant Hix's own affidavit. This resembles a more extreme version of the argument rejected by the Supreme Court in *Kurschner*, in which the plaintiffs were "essentially urging this Court to reject the any evidence standard of appellate review that is consistently-utilized in these types of cases and asking us to adopt an appellate review somewhere between a substantial evidence and de novo in examining decisions of a planning

commission." 376 S.C. at 173, 656 S.E.2d at 351. This Court, like the *Kurschner* court, should "decline to do so." *Id.*

Appellants confusingly frame the relevant issue on appeal before this Court as follows: "When the Planning Commission 'reaffirmed' the old map, did the Planning Commission 'reaffirm' the wrong drawing instead of the new drawing in violation of S.C. Code Ann. § 16-17-600?" Thus, assuming for the sake of argument that the Commission did, in fact, approve the wrong drawing, the specific issue Appellants have presented to this Court for review is whether the Commission's reaffirmance of the "wrong drawing instead of the new drawing" violated § 16-17-600, which is a criminal statute that makes it a felony for any person to "wilfully and knowingly... destroy[s] or damage[s] the remains of a deceased human being ... [or to] desecrate human remains." Appellants' basis for asserting that the Commission violated this criminal statute is unclear, and their Initial Brief offers no assistance: there is a single mention of § 16-17-600 in the heading of the second numbered Argument section with no further explanation in the body of the section. [Appellants' Initial Brief p. 14]. Appellants have effectively abandoned this aspect of their argument and this Court should disregard it.

III. APPELLANTS' ARGUMENT THAT THE COMMISSION ABUSED ITS DISCRETION AND FAILED TO REQUIRE COMPLIANCE WITH S.C. CODE ANN. §§ 16-17-600 & 27-43-10 HAS NOT BEEN PRESERVED FOR THIS COURT'S REVIEW BECAUSE THE TRIAL COURT DID NOT EXPLICITLY RULE ON APPELLANTS' STATUTORY ARGUMENT AND APPELLANTS' MOTION TO ALTER OR AMEND DID NOT REQUEST SUCH A RULING.

Again, for an issue or argument to be preserved for this Court's review, the circuit court must rule on an issue or argument or the appealing party must include it in the party's Rule 59(e), SCRCP, motion. *Floyd*, 403 S.C. at 479, 744 S.E.2d at 167 (citing *Elam*, 361 S.C. at 23-24, 602 S.E.2d at 779-80); *see also Jeffcoat*, 444 S.C. at 237, 906 S.E.2d at 595; *Bugsy's, Inc.*, 340 S.C. at 96, 530 S.E.2d at 894. Even if a trial court "makes a general ruling on an issue," if the court "does

not address the specific argument raised by a party, that party must make a Rule 59(e) motion asking the trial court to rule on the issue in order to preserve it for appeal." *Cowburn*, 366 S.C. at 41, 619 S.E.2d at 449 (emphasis added) (citing *Noisette*, 304 S.C. at 58, 403 S.E.2d at 124); *see also NCCI, Inc.*, 369 S.C. at 247-48, 631 S.E.2d at 274 ("When a trial court does not explicitly rule on an argument raised, and the appellant makes no Rule 59(e), SCRCP, motion to obtain a ruling, the appellate court may not address the issue.") (emphasis added) (citing *Noisette*, 304 S.C. at 58, 403 S.E.2d at 124); *Goddard*, 310 S.C. at 412, 426 S.E.2d at 831 ("Issues on which the trial court never ruled and which were not raised in post-trial motion are not properly before this court.") (citing *Cox*, 301 S.C. at 494, 392 S.E.2d at 793).

Since the trial court's June 10, 2025 and June 30, 2025 orders did not explicitly rule on Appellants' argument that the Commission abused its discretion and failed to require compliance with S.C. Code Ann. §§ 16-17-600 and 27-43-10, and Appellants' Rule 59(e) Motion to Alter or Amend did not ask the trial court to specifically rule on whether the requirements of these statutes had been satisfied, Appellants have failed to preserve their arguments based on these statutes for appellate review; therefore, the issues raised therein are not properly before this Court.

As discussed above, S.C. Code Ann. § 16-17-600 is a criminal statute making it a felony offense for any person who "wilfully and knowingly... destroy[s] or damage[s] the remains of a deceased human being ... [or to] desecrate human remains." S.C. Code Ann. § 27-43-10 establishes procedures and requirements for the removal of graves from an abandoned cemetery or burial ground. Appellants raised their argument that the Commission failed to require compliance with §§ 16-17-600 and 27-43-10 in their Memorandum of Law in Support of their appeal from the Commission's January 14, 2025 decision, filed June 3, 2025. [Appellants' June 3, 2025 Memorandum of Law in Support pp. 8-9] (R. pp. 268-269).

However, the trial court's June 10, 2025 and June 30, 2025 orders do not specifically mention either statute. [June 10, 2025 Order; June 30, 2025 Order] (R. pp. 25-31; pp. 32-38). While there is a general reference to Spano going "above and beyond what is required by state law concerning its efforts to protect the gravesite area" in a footnote and a mention of Spano having "exceeded legal requirements" in evaluating the existence of gravesites, if a trial court "makes a general ruling on an issue" but "does not address the specific argument raised by a party, that party must make a Rule 59(e) motion asking the trial court to rule on the issue in order to preserve it for appeal." [June 10, 2025 Order p. 5 fn4, p. 6; June 30, 2025 Order p. 5 fn3, p. 6] (R. pp. 29-30; pp. 36-37); *Cowburn*, 366 S.C. at 41, 619 S.E.2d at 449 (emphasis added) (citing *Noisette*, 304 S.C. at 58, 403 S.E.2d at 124); *see also NCCI, Inc.*, 369 S.C. at 247-48, 631 S.E.2d at 274 ("When a trial court does not explicitly rule on an argument raised, and the appellant makes no Rule 59(e), SCRCP, motion to obtain a ruling, the appellate court may not address the issue.") (emphasis added).

The trial court's nonspecific references to "what is required by state law" and "legal requirements" are the exact type of "general ruling on an issue" that required Appellants to make a Rule 59(e) motion requesting a ruling on the applicability of the specific statutes cited in Appellants' argument to preserve the issue for appeal. *See Cowburn*, 366 S.C. at 41, 619 S.E.2d at 449 (citing *Noisette*, 304 S.C. at 58, 403 S.E.2d at 124). Appellants' Motion to Alter or Amend the trial court's June 10, 2025 order, filed June 24, 2025, took issue with what they characterized as "several personal and petty remarks" contained within the Order "proposed by opposing counsel," and Appellants' Motion only asked the court to alter or amend the Order by "omitting the following remarks" they took issue with. [June 24, 2025 Motion to Alter or Amend] (R. p. 286). The trial court's June 30, 2025 order omitted the remarks as requested by Appellants but was otherwise

identical to the June 10, 2025 order. [June 30, 2025 Order] (R. pp. 32-38). Appellants' Motion to Alter or Amend did not ask the trial court to address or rule on any issues or arguments, much less the specific statutory arguments based on §§ 16-17-600 and 27-43-10.

Because the trial court's June 10, 2025 and June 30, 2025 orders did not address the specific arguments raised by Appellants regarding whether the statutory requirements of §§ 16-17-600 and 27-43-10 were complied with, and Appellants' Motion to Alter or Amend did not ask for a specific ruling on the issue, Appellants have failed to preserve their statutory arguments for this Court's review; therefore, the issues raised therein are not properly before this Court.

Even if this Court determines that the trial court's June 10, 2025 and June 30, 2025 orders did specifically address Appellants' statutory arguments based on §§ 16-17-600 and 27-43-10, the trial court did not err in approving the Commission's January 14, 2025 decision because the revised plat accounted for potential graves. The Commission and the trial court both considered the parties' submissions, which included the December report of Spano's archaeologist, Kimberly Nagle, M.S., R.P.A., of S&ME Inc. ("S&ME"), which was based on her investigation of the property and incorporated information from reports prepared by Appellants' own consultants, Preservation South, LLC ("Preservation South") and New South Associates ("New South"). [June 1, 2025 Spano Pre-Hearing Brief, Exhibit 6] (R. pp. 190-254). In this report, 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:

- 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 vehicles should occur within the cemetery or buffer.

[*See id.*, p. 3] (R. p. 192). 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 the preservation of Area 2. [June 1, 2025 Spano Pre-Hearing Brief, Exhibit 4] (R. pp. 184-186). The minutes of the Commission's January 14, 2025 meeting explicitly reference these reports, making it clear that the Commission considered the updated findings:

> 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.

[January 14, 2025 Commission Meeting Minutes 19:41-47] (R. p. 188, lines 41-47). Appellants' claim that the Commission "failed to require the developer to confirm that the burial grounds on Graveyard Hill will be preserved" is meritless, as the record before the Commission and the trial court showed that the revised map specifically set off and protected the grave site in accordance with the findings from S&ME's December report, which incorporated Appellants' consultants' own findings. The Commission's January 14, 2025 decision was supported by ample evidence in the record, and the trial court's determination that it complied with any applicable statutory requirements should be affirmed.

IV. THE TRIAL COURT DID NOT ERR IN FINDING THAT THE COMMISSION'S JANUARY 14, 2025 DECISION APPROVING THE REVISED PLAT WAS NOT IN VIOLATION OF ANDERSON COUNTY ORDINANCE § 24-401(7) OR § 24-367'S REQUIREMENTS RELATING TO PUBLIC COMMENT OR A PUBLIC HEARING REGARDING A FINAL SUBDIVISION PLAT, AS THERE WAS EVIDENCE SUPPORTING THE FINDING THAT THE REVISED PLAT SHOWED THE PROTECTED GRAVESITE AREA WILL BE IN OPEN SPACE IN COMPLIANCE WITH §24-401(7) AND §24-367 DOES NOT MANDATE PUBLIC COMMENT OR A PUBLIC HEARING FOR SUBSEQUENT REVISIONS TO PRELIMINARY PLATS.

Appellants continue to incorrectly assert that Anderson County Ordinance § 24-367 "requires a Master Plan and Master Plat for all residential real estate developments," despite the trial court pointing out this mistake in both its June 10, 2025 order and June 30, 2025 order by stating that the "correct terminology ... is 'final subdivision plat' or 'final plat.'" [June 10, 2025 Order p. 2 fn3; June 30, 2025 Order p. 2 fn2] (R. p. 26; p. 33). Appellants not only repeat the incorrect terminology, but also repeat the incorrect argument that the Commission's January 14, 2025 decision "must be nullified" because a "master plat was not presented to the public" and Spano "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" § 24-367. [Appellants' Initial Brief p. 18]. While § 24-367 addresses final subdivision plats, once a preliminary plat is approved by the Commission, Anderson County ordinances do not mandate public comment or a public meeting for subsequent revisions to the preliminary plat. The ordinances addressing preliminary plats make this distinction clear:

> 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.

Anderson County Ordinance § 24-335(5) (R. p. 282) (emphasis added); *see also* Anderson County Ordinance § 24-337 ("The following supplemental information, where applicable, shall be submitted after approval of the preliminary plat") (emphasis added). Thus, while Appellants erroneously argue that the Commission approved a "master plan" despite violating § 24-367's requirements for public comment and a public hearing, the Commission's January 14, 2025

decision did not implicate § 24-367 because it approved a subsequent revision to a preliminary plat. Thus, Appellants' argument should be disregarded.

Appellants also repeat their same rejected argument that the Commission's January 14, 2025 decision was in violation of Anderson County Ordinance § 24-401(7)'s "open space" requirements. The trial court specifically rejected this argument by finding that the revised plat approved by the Commission "shows the protected gravesite area will be in 'open space' in compliance with § 24-401(7)." [June 10, 2025 Order p. 5; June 30, 2025 Order p. 4-5] (R. p. 29; pp. 35-36). The Commission and the trial court both considered the parties' submissions, which included the December report of Spano's archaeologist, Ms. Nagle of S&ME, which was based on her investigation of the property as well as incorporated information from reports prepared by Appellants' own consultants, Preservation South and New South. [June 1, 2025 Spano Pre-Hearing Brief, Exhibit 6] (R. pp. 190-254). In this report, after surveying and testing the additional areas identified by Appellants' own consultants ("Area 1" and "Area 2") and conducting further testing, S&ME made the following findings:

- 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 vehicles should occur within the cemetery or buffer.

[*See id.*, p. 3] (R. p. 192). In response to these findings, Spano directed SW to prepare the Revised Site Plan to reflect S&ME's findings concerning preserving Area 2. [June 1, 2025 Spano Pre-Hearing Brief, Exhibit 4] (R. pp. 184-186). The minutes from the Commission's January 14, 2025 meeting explicitly reference these reports, making it clear that the Commission considered the updated findings:

> 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.

[January 14, 2025 Commission Meeting Minutes 19:41-47] (R. p. 188, lines 41-47). Appellants' claim that the Commission "failed to require the developer to confirm that the burial grounds on Graveyard Hill will be preserved" is meritless, as the record before the Commission and the trial court showed that the revised map specifically set off and protected the grave site in accordance with the findings from S&ME's December report, which incorporated Appellants' consultants' own findings. The Commission's January 14, 2025 decision was supported by ample evidence in the record, and the trial court's approval should be affirmed.

V. APPELLANTS' ARGUMENT THAT THE TRIAL COURT ERRED IN FAILING TO FIND THAT THE ANDERSON COUNTY PLANNING COMMISSION ABUSED ITS DISCRETION BY VIOLATING ANDERSON COUNTY ORDINANCES §§ 24-335(2), 24-336, 24-331(3), 24-331(5), AND 24-367'S REQUIREMENT THAT A PRELIMINARY PLAT IS NULL AND VOID IF A FINAL SUBDIVISION PLAT IS NOT SUBMITTED WITHIN ONE YEAR OF APPROVAL OF THE PRELIMINARY PLAT HAS NOT BEEN PRESERVED FOR THIS COURT'S REVIEW BECAUSE THE TRIAL COURT DID NOT SPECIFICALLY RULE ON APPELLANTS' ARGUMENTS BASED ON THESE ORDINANCES AND APPELLANTS' MOTION TO ALTER OR AMEND FAILED TO REQUEST SUCH RULINGS.

Appellants' remaining arguments based on alleged violations of Anderson County Ordinances §§ 24-335(2), 24-336, 24-331(3), 24-331(5), and 24-367's requirements that a preliminary plat is null and void if a final subdivision plat is not submitted within one year of approval of the preliminary plat have not been preserved for this Court's review, and thus these issues are not properly before this Court.

For an issue or argument to be preserved for this Court's review, the circuit court must rule on an issue or argument or the appealing party must include it in their Rule 59(e), SCRCP, motion. *Floyd*, 403 S.C. at 479, 744 S.E.2d at 167 (citing *Elam*, 361 S.C. at 23-24, 602 S.E.2d at 779-80);

see also Jeffcoat, 444 S.C. at 237, 906 S.E.2d at 595; *Bugsy's, Inc.*, 340 S.C. at 96, 530 S.E.2d at 894. Even if a trial court "makes a general ruling on an issue," if the court "does not address the specific argument raised by a party, that party must make a Rule 59(e) motion asking the trial court to rule on the issue in order to preserve it for appeal." *Cowburn*, 366 S.C. at 41, 619 S.E.2d at 449 (emphasis added) (citing *Noisette*, 304 S.C. at 58, 403 S.E.2d at 124); *see also NCCI, Inc.*, 369 S.C. at 247-48, 631 S.E.2d at 274 ("When a trial court does not explicitly rule on an argument raised, and the appellant makes no Rule 59(e), SCRCP, motion to obtain a ruling, the appellate court may not address the issue.") (emphasis added) (citing *Noisette*, 304 S.C. at 58, 403 S.E.2d at 124); *Goddard*, 310 S.C. at 412, 426 S.E.2d at 831 ("Issues on which the trial court never ruled and which were not raised in post-trial motion are not properly before this court.") (citing *Cox*, 301 S.C. at 494, 392 S.E.2d at 793).

Since the trial court's June 10, 2025 and June 30, 2025 orders did not explicitly rule on Appellants' argument that the Commission abused its discretion and violated Anderson County Ordinances §§ 24-335(2), 24-336, 24-331(3), 24-331(5), and 24-367's requirement that a preliminary plat is null and void if a final subdivision plat is not submitted within one year of approval of the preliminary plat, and Appellants' Rule 59(e) Motion to Alter or Amend did not ask the trial court to specifically rule on whether the requirements of these ordinances had been complied with, Appellants have failed to preserve their arguments based on these ordinances for appellate review, and thus the issues raised therein are not properly before this Court.

Appellants' arguments related to § 24-335(2)'s supposed requirement that "the subdivision administrator shall review the plat," § 24-336's eighteen criteria for the subdivision administrator's review, § 24-331(3)'s requirement that the "subdivision administrator shall present his recommendation" to the Commission, § 24-331(5)'s requirements relating to approval of road

alignments, dimensions, layout, shape of lots and proposed rights-of-way, and §24-367's requirement that a preliminary plat is null and void if a final subdivision plat is not submitted within one year of approval of the preliminary plat were all raised to the trial court in Appellants' memorandum of law in support of their appeal of the Commission's January 14, 2025 decision. [*See* Appellants' June 3, 2025 Memorandum of Law in Support pp. 10-13] (R. pp. 270-273). However, the trial court's June 10, 2025 and June 30, 2025 orders contain no mention of the phrase "subdivision administrator," nor does the trial court specifically cite § 24-335(2), § 24-336, or § 24-331(3) and (5), and the requirements therein, in its rejection of Appellants' arguments based on the Anderson County ordinances. [*See* June 10, 2025 Order; June 30, 2025 Order] (R. pp. 25-31; pp. 32-38). While the orders do mention § 24-367, they do so only to correct Appellants' incorrect use of "master plat" instead of "final plat" and to reject Appellants' argument that public comment or a public hearing was required due to a preliminary plat being involved, rather than a final plat that would fall under the ordinance. [June 10, 2025 Order p. 2 fn3, 5-6; June 30, 2025 Order p. 2 fn2, 5] (R. pp. 26, 29-30; pp. 33, 36). The orders do not address Appellants' argument that § 24-367's one-year requirement was not complied with.

The trial court's failure to specifically address each of the ordinances and their requirements required Appellants to make a Rule 59(e) motion requesting a ruling on the applicability of the specific ordinances cited by Appellants in order to preserve the issue for appeal. *See Cowburn*, 366 S.C. at 41, 619 S.E.2d at 449 (citing *Noisette*, 304 S.C. at 58, 403 S.E.2d at 124); *see also NCCI, Inc.*, 369 S.C. at 247-48, 631 S.E.2d at 274 ("When a trial court does not explicitly rule on an argument raised, and the appellant makes no Rule 59(e), SCRCP, motion to obtain a ruling, the appellate court may not address the issue.") (emphasis added). Appellants' Motion to Alter or Amend the trial court's June 10, 2025 order only took issue with what they

characterized as "several personal and petty remarks" contained within the order "proposed by opposing counsel," and Appellants' motion only asked the court to alter or amend the order by "omitting the following remarks" they took issue with. [June 24, 2025 Motion to Alter or Amend] (R. p. 286). The trial court's June 30, 2025 order omitted the remarks as requested by Appellants but was otherwise identical to the June 10, 2025 order. [June 30, 2025 Order] (R. pp. 32-38). Appellants' Motion to Alter or Amend did not ask the trial court to address or rule on any issues or arguments, much less the specific arguments based on certain Anderson County Ordinances that Appellants attempt to rely upon again before this Court.

Because the trial court's June 10, 2025 and June 30, 2025 orders did not address the specific arguments raised by Appellants regarding whether the requirements of Anderson County Ordinances §§ 24-335(2), 24-336, 24-331(3), 24-331(5), along with 24-367's requirement that a preliminary plat is null and void if a final subdivision plat is not submitted within one year of approval of the preliminary plat, were complied with, and Appellants' Motion to Alter or Amend did not ask for a specific ruling on the issue, Appellants have failed to preserve their arguments based on the requirements of these ordinances for this Court's review, and thus the issues raised therein are not properly before this Court.

VI. APPELLANTS' ARGUMENT THAT RESPONDENT SPANO & ASSOCIATES, INC. LACKED STANDING TO INTERVENE AND TO MOVE TO CORRECT THE RECORD HAS NOT BEEN PRESERVED FOR THIS COURT'S REVIEW BECAUSE APPELLANTS FAILED TO APPEAL THE TRIAL COURT'S FEBRUARY 21, 2025 ORDER GRANTING SPANO'S MOTION TO INTERVENE AND THE TRIAL COURT DID NOT RULE ON STANDING IN ITS ORDER GRANTING MOTION TO CORRECT THE RECORD AND APPELLANTS DID NOT FILE A RULE 59(E), SCRCP, MOTION ASKING THE TRIAL COURT TO RULE ON THE ISSUE.

Appellants' argument that Spano lacked standing to file its Motion to Intervene and lacked standing to file its Motion to Correct the Record under Rule 60(a), SCRCP, has not been preserved

for this Court's review, and thus these issues are not properly before this Court. On October 28, 2024, Spano filed a Motion to Intervene in Appellants' first appeal of the Commission's April 9, 2024 decision. [October 28, 2024 Motion to Intervene] (R. pp. 142-146). On February 21, 2025, the trial court entered an order granting Spano's Motion to Intervene and granting the Commission's Motion to Dismiss Appellants' first appeal. [February 21, 2025 Order] (R. pp. 16-21). Appellants did not file a motion to reconsider, amend, or alter pursuant to Rule 59(e), SCRCP, nor did they appeal the order to this Court. Since the trial court's February 21, 2025 order is not before this Court on the current appeal, Appellants' argument that Spano lacked standing to intervene is not properly before this Court. [*See* July 28, 2025 Notice of Appeal; September 29, 2025 Notice of Appeal].

While Appellants raised the issue of whether Spano had standing to move the trial court to correct the record in both their memorandum in opposition and their sur-reply in opposition, the trial court's September 4, 2025 order granting Spano's motion does not address Appellants' standing argument. [*See* Appellants' August 25, 2025 Memorandum in Opposition p. 6; Appellants' August 27, 2025 Reply Memorandum in Opposition p. 3; September 4, 2025 Order] (R. p. 325; p. 369; pp. 45-48). Appellants also failed to file a Rule 59(e), SCRCP, motion to reconsider the order, instead only choosing to file a "Motion to Reconsider the Form 4 Order on the Bond and Objection to the Proposed Formal Order on the Bond" which related to a separate and distinct motion and order. [*See* September 26, 2025 Motion to Reconsider] (R. pp. 374-379). Since the trial court's order does not address Appellants' standing argument and Appellants did not file a Rule 59(e) motion to reconsider the order, Appellants' standing argument is not properly before this Court. *See Floyd*, 403 S.C. at 479, 744 S.E.2d at 167 (citing *Elam*, 361 S.C. at 23-24, 602 S.E.2d at 779-80); *see also Jeffcoat*, 444 S.C. at 237, 906 S.E.2d at 595 (lack of standing argument not preserved

for appellate review where master-in-equity did not rule on issue and appellant did not move for reconsideration and ask the master to rule on standing); *Bugsy's, Inc.*, 340 S.C. at 96, 530 S.E.2d at 894; *NCCI, Inc.*, 369 S.C. at 247-48, 631 S.E.2d at 274 (citing *Noisette*, 304 S.C. at 58, 403 S.E.2d at 124); *Goddard*, 310 S.C. at 412, 426 S.E.2d at 831 (citing *Cox*, 301 S.C. at 494, 392 S.E.2d at 793).

VII. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN GRANTING RESPONDENT SPANO & ASSOCIATES, INC.'S RULE 60(A), SCRCP, MOTION TO CORRECT THE RECORD BECAUSE ALL PARTIES PARTICIPATED IN PROCEEDINGS AS IF THE CORRECT ENTITY HAD BEEN NAMED AND THERE WAS NO PREJUDICE TO EITHER SIDE.

The final argument section of Appellants' Initial Brief confusingly asks this Court to "deny the motion" to correct the record, although the trial court issued an order on September 4, 2025 granting Spano's Motion to Correct the Record, and Appellants have appealed that order. [*See* September 4, 2025 Order; September 29, 2025 Notice of Appeal] (R. pp. 45-48). Thus, the issue raised on appeal is whether the trial court erred in granting Spano's Motion to Correct the Record. When reviewing decisions granting motions under Rule 60(a), SCRCP, the abuse of discretion standard applies. *Landry v. Landry*, 430 S.C. 153, 160, 843 S.E.2d 491, 494 (2020) (citing *Ex Parte Carter*, 422 S.C. 623, 631, 813 S.E.2d 686, 690 (2018)). "An abuse of discretion occurs when the decision is controlled by some error of law or is based on findings of fact that are without evidentiary support." *McKinney v. Pedery*, 413 S.C. 475, 482, 776 S.E.2d 566, 570 (2015) (citing *Eason v. Eason*, 384 S.C. 473, 479, 682 S.E.2d 804, 807 (2009)). Appellants' arguments must fail because the trial court's order granting Spano's Motion to Correct the Record does not rely upon an error of law or upon findings of fact that are without evidentiary support.

Rule 60(a), SCRCP, provides, in relevant part: "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." A clerical error is generally defined as a mistake or omission in writing or copying "by a clerk, counsel, judge or printer which is not the result of exercise of judicial function." *See Dion v. Ravenel, Eiserhardt Assocs.*, 316 S.C. 226, 230, 449 S.E.2d 251, 253 (Ct. App. 1994). Although clerical errors are mere "blunders in execution," mistakes "where the court changes its mind, either because it made a legal or factual mistake in making its original determination, or because on second thought it has decided to exercise its discretion in a manner different from the way it was exercised in the original determination" exceed this threshold and cannot be corrected pursuant to Rule 60(a), SCRCP. *See Landry*, 430 S.C. at 161, 843 S.E.2d at 495 (quoting *Smith v. McNair Law Firm*, 756 F.3d 259, 265 (4th Cir. 2014)). A clerical mistake that a trial court may correct pursuant to Rule 60(a), SCRCP, must involve an inconsistency between the text of an order and the trial court's intent when it entered the order, including an unintended ambiguity that obscures the trial court's original intent. *See Landry*, 430 S.C. at 161, 843 S.E.2d at 495 (quoting *Smith v. McNair*, 756 F.3d at 265). Because the trial court intended for its orders to apply to the Spano entity that owned the land at issue, the trial court did not abuse its discretion in granting Spano's Motion to Correct the Record because it resolved an inconsistency between the text of the orders and the trial court's intent when it entered the orders.

On February 13, 2025, Appellants filed their appeal from the Commission's January 14, 2025 decision with the trial court and named Spano & Associates, Inc. as a defendant. [*See* February 13, 2025 Complaint] (R. pp. 77-85). Spano filed its Motion to Correct the Record on August 6, 2025, after the trial court issued its June 10, 2025 order dismissing the appeal and its June 30, 2025 order denying Appellants' June 24, 2025 Motion to Alter or Amend, because "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." [August 6, 2025 Motion to Correct the Record p. 2] (R. p. 318). On this basis, Spano requested that the trial court, pursuant to Rule 60(a), order that all references to Spano & Associates, Inc. "shall be treated as references to Spano & Associates Asheville, LLC" in the related actions. [*Id.*] (R. p. 318).

In granting Spano's Motion, the trial court found 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." [September 4, 2025 Order p. 2] (R. p. 46). Crucially, the trial court found that "the two Spano entities are related, and neither Spano entity suffered any prejudice" because "Ralph Spano ... is the Registered Agent of Spano & Associates, Inc. and is an Authorized Person of Spano & Associates Asheville, LLC." [*Id.*]. The trial court also noted that, 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.'" [*Id.*]. The trial court found that "all parties participated in this appeal as if the correct defendant entity had been named" and "there is no prejudice to either side from this oversight, and arguments in these proceedings were the same as they would have been if the correct defendant entity was named." [*Id.*] Resolving this inconsistency between the intent of the parties, which was that the Spano entity that owned the land was involved, and the text of the record in the proceedings, in which Appellants named a different Spano entity as the property owner, is exactly the type of scenario where a court may properly correct a corporate defendant's misnomer under Rule 60(a), SCRCP. *See Landry*, 430 S.C. at 161, 843 S.E.2d at 495 (quoting *Smith v. McNair*, 756 F.3d at 265).

Although Appellants contend that correcting the name of the Spano entity that owns the property "has significant legal consequences for the case," they have failed to identify any specific prejudice that they have faced as a result. [*See* Appellants' Initial Brief p. 27]. Appellants' argument that South Carolina law does not permit such a correction of a clerical error under Rule 60(a), SCRCP, fails to rebut the caselaw that the trial court cited and relied on. *See Tunstall v. 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 the process is to bring parties into court. If it names them in such terms that every intelligent person understands who is meant ... it has fulfilled its purpose; and courts should not put themselves in the position of failing to recognize what is apparent to everyone else."). Here, naming Spano & Associates, Inc. instead of Spano & Associates Asheville, LLC, is a classic example of this type of misnomer, because the slight variation in the names of the entities did not mislead the trial court or the parties, and the parties understood that the named Spano defendant was meant to refer to the Spano entity that owned the property in question. *See Tunstall*, 160 S.C. at 563, 159 S.E. at 388; *A.H. Fischer Lumber Co.*, 162 F.2d 872. The trial court therefore did not abuse its discretion in granting Spano's Motion because its order was not based on an error of law or on findings of fact that were without evidentiary support. *McKinney*, 413 S.C. at 482, 776 S.E.2d at 570 (citing *Eason*, 384 S.C. at 479, 682 S.E.2d at 807).

CONCLUSION

For the reasons stated herein, this Court should affirm the circuit court's orders dismissing Appellants' appeal of the Commission's January 14, 2025 decision and affirming the

Commission's decision. Additionally, this Court should affirm the circuit court's orders granting Respondent Spano's motion to correct the record.

Respectfully submitted,

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