

RECEIVED

Aug 24 2026

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., Respondents.

FINAL BRIEF OF RESPONDENT ANDERSON COUNTY PLANNING COMMISSION

HOLCOMBE BOMAR, P.A.

P.O. Box 1897
Spartanburg, SC 29304
(864) 594-5300
tflippin@holcombebomar.com

By: *s/ Todd Russell Flippin*

Todd Russell Flippin (S.C. Bar No. 101197)

*Attorneys for Anderson County Planning
Commission*

Spartanburg, South Carolina

August 24, 2026

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	iii
STATEMENT OF ISSUES ON APPEAL.....	v
STATEMENT OF THE CASE.....	1
STANDARD OF REVIEW.....	6
ARGUMENT	7
I. THE ANDERSON COUNTY PLANNING COMMISSION NEITHER ABUSED ITS DISCRETION NOR FAILED TO COMPLY WITH ANDERSON COUNTY ORDINANCES WHEN ON JANUARY 14, 2025, THE COMMISSION APPROVED RESPONDENT SPANO & ASSOCIATE, INC.'S REVISED SUBDIVISION PLAT.....	7
II. NEITHER COMMON LAW, CRIMINAL CODES, NOR STATUTORY STANDARDS GOVERNING THE TREATMENT OF DEAD BODIES, GRAVES, AND BURIAL SITES CONTROL THE ANDERSON COUNTY PLANNING COMMISSION'S CONSIDERATION OF PRELIMINARY SUBDIVISION PLATS	17
III. RESPONDENT SPANO & ASSOCIATES, INC. WAS A NECESSARY PARTY TO APPELLANTS' FIRST APPEAL FROM THE APPROVAL OF THIS PRELIMINARY SUBDIVISION APPLICATION AND HAD STANDING TO INTERVENE IN THAT ACTION	20
CONCLUSION	23
PROOF OF SERVICE	24

TABLE OF AUTHORITIES

Cases

<i>Dorman v. Aiken Commcns., Inc.</i> , 303 S.C. 63, 398 S.E.2d 687 (1990).....	20
<i>Elam v. S.C. Dep’t of Transp.</i> , 361 S.C. 9, 602 S.E.2d 772 (2004).....	18
<i>Ex parte DeBordieu Colony Cmty. Ass’n, Inc.</i> , 442 S.C. 285, 898 S.E.2d 179 (Ct. App. 2024).....	22
<i>Ex parte Reichlyn</i> , 310 S.C. 495, 427 S.E.2d 661 (1993).....	22
<i>Kurschner v. City of Camden Planning Comm’n</i> , 376 S.C. 165, 656 S.E.2d 346 (2008).....	6, 7
<i>Town of Hollywood v. Floyd</i> , 403 S.C. 466, 744 S.E.2d 161 (2013).....	7
<i>Trask v. Beaufort Cnty.</i> , 392 S.C. 560, 709 S.E.2d 536 (Ct. App. 2011).....	20
<i>Wilder Corp. v. Wilke</i> , 330 S.C. 71, 497 S.E.2d 731 (1998).....	18

Rules

SCRCP 24.....	21, 22
---------------	--------

Statutes

S.C. Code Ann. § 6-29-310.....	7, 8, 17
S.C. Code Ann. § 6-29-340.....	17, 18
S.C. Code Ann. § 6-29-1150.....	21
S.C. Code Ann. § 6-29-1155.....	21
S.C. Code Ann. § 6-29-1530.....	14
S.C. Code Ann. § 16-17-600.....	11, 18, 19, 20
S.C. Code Ann. § 27-43-10.....	4, 5, 10, 18, 19, 20

Ordinances

Anderson County Ordinance § 24-51.....	12
Anderson County Ordinance § 24-308.....	17
Anderson County Ordinance § 24-335.....	8, 9
Anderson County Ordinance § 24-336.....	8, 9, 14
Anderson County Ordinance § 24-337.....	15
Anderson County Ordinance § 24-367.....	5, 14, 15, 16, 17
Anderson County Ordinance § 24-368.....	16
Anderson County Ordinance § 24-401.....	5, 9, 16, 17

STATEMENT OF ISSUES ON APPEAL

I. THE ANDERSON COUNTY PLANNING COMMISSION NEITHER ABUSED ITS DISCRETION NOR FAILED TO COMPLY WITH ANDERSON COUNTY ORDINANCES WHEN ON JANUARY 14, 2025, THE COMMISSION APPROVED RESPONDENT SPANO & ASSOCIATE, INC.'S REVISED SUBDIVISION PLAT.

- A. Land Use Ordinances Do Not Require Preliminary Subdivision Plats to Address Existing or Suspected Gravesites.
- B. Appellants Do Not Challenge the Planning Commission's Approval on April 9, 2024, of Spano's Preliminary Subdivision Plat and Appellants Can Show Neither that the Original Plat Failed to Comply with Applicable Standards nor that Approval was an Abuse of Discretion.
- C. Without Evidence Appellants Claim that the Commission Reapproved the Original Plat Instead of Approving the Revised Plat, Which Provided Adequate Protections for Identified Gravesites.
- D. Approval of Spano's Revised Plat at the January 14, 2025, Commission Meeting was Not an Abuse of Discretion.
- E. The Revised Subdivision Plat Complied with Design Standards and its Approval at the Commission's January 14, 2025, Meeting Did Not Require Procedures Such as the Planning Staff's Recommendation or a Public Hearing.

II. NEITHER COMMON LAW, CRIMINAL CODES, NOR STATUTORY STANDARDS GOVERNING THE TREATMENT OF DEAD BODIES, GRAVES, AND BURIAL SITES CONTROL THE ANDERSON COUNTY PLANNING COMMISSION'S CONSIDERATION OF PRELIMINARY SUBDIVISION PLATS.

- A. Appellants Fail to Demonstrate that the Common Law Regarding the Invasion or Disturbance of Gravesites Imposes a Duty on the Planning Commission when Evaluating a Preliminary Subdivision Application.
- B. Section 16-17-600 of the Criminal Code Does Not Implicate the Commission's Consideration of Preliminary Subdivision Plats and Section 27-43-10 Imposes No Duties Upon the Commission.

III. RESPONDENT SPANO & ASSOCIATES, INC. WAS A NECESSARY PARTY TO APPELLANTS' FIRST APPEAL FROM THE APPROVAL OF THIS PRELIMINARY SUBDIVISION APPLICATION AND HAD STANDING TO INTERVENE IN THAT ACTION.

- A. Spano's Standing to Intervene in the First Appeal is Not Properly Before this Court.
- B. A Subdivision Development Applicant is a Necessary Party to an Interested Party's Appeal from the Approval of a Preliminary Subdivision Application.

STATEMENT OF THE CASE

This case is about the proper use of discretion by a planning commission. Specifically, the issue before the Court is whether the Anderson County Planning Commission (the “Commission”) abused its discretion by approving revisions to a preliminary subdivision plat the Commission approved the prior year. Discretion exercised when, according to the statutory procedure governing appeals from the Commission’s approval or disapproval of subdivision development applications, Judge Lawton McIntosh remanded Appellants’ first appeal back to the Commission with revisions made to protect gravesites. Discretion that, moreover, was exercised after consideration of Appellants’ affidavits, historical documents, and engineering reports. Appellants cannot now credibly argue that when the Commission approved the plat revised to protect the gravesites that are the subject of this appeal, the Commission abused its discretion.

This case is not about the factual evidence behind the Commission’s decision. Appellants concede, and the record is clear, that the revised plat approved by the Commission adequately protects gravesites identified at the project site. Nor is there evidence that the revised plat, which was submitted to the planning staff prior to approval by the Commission, failed to comply with the ordinances addressing conservation subdivisions.

This case is no longer about the dignity of gravesites, whether those of enslaved individuals, Native Americans, or any other departed persons. That important issue was resolved when the Commission approved the revised plat protecting those sites. The statutes governing the level of care and dignity owing to gravesites, and those buried therein, and providing criminal sanctions for the mishandling of graves, will continue to govern those working on site as the neighborhood is built. Moreover, the developer’s protective covenants should protect these gravesites in perpetuity. In other words, the developer’s revised plat and covenants will provide

the gravesites legal protections of which they have never before benefited. Moreover, as they are enclosed within a neighborhood, the graves will not remain lying forgotten in a thicket but will be surrounded by the living.

The Commission approved Phase II¹ of Spano & Associates, Inc.’s (“Spano”) Anderson Reserve subdivision (the “Project”) at the Commission’s meeting on April 9, 2024. (R. p. 489, line 22 – p. 505, line 1). At the meeting, the Commission’s staff reported that the Project satisfied all of the requirements of the Country’s subdivision development ordinances. (R. p. 491, lines 2-15). Spano’s representatives provided additional information about the project and responded to questions from the Commission. Anderson Reserve’s first phase, including a plan for 150 homes, was approved by the Commission in May of 2023. The plat before the Commission on April 9th included both the approved Phase I and the proposed Phase II. (R. p. 491, lines 2-9). Though not required, Spano did this to “present the entire project as a whole.” (R. p. 498, lines 21-28).

Phase II of the Project included 232 homes, which combined with Phase I resulted in a total of 382 homes, even though the ordinance would allow nearly 670 homes. (R. p. 492, lines 3-11). Spano’s representatives informed the Commission that they had abandoned plans to develop townhomes in a third phase of the Project. As presented to the Commission, the neighborhood will be 57% less dense than allowed under the conservation subdivision standards.

Spano described additional steps taken in their effort to be “good neighbors.” Spano added a 50’ buffer on Fants Road, more than the ordinance requires, to reduce the Project’s impact on adjacent residential properties. (R. p. 496, lines 24-32). Spano addressed the potential impact on emergency services by meeting with the local fire chief. The developer also discussed the Project

¹ The Commission approved the preliminary application for Phase I of the project in May of 2023. (R. p. 492, line 48 – p. 493, line 10). That decision is not the subject of this appeal.

with the local school district superintendent and described the capacities and plans for growth in the elementary, middle, and high schools that the neighborhood's children will attend. (R. p. 496, line 33 – p. 497, line 28). Environmental concerns including storm water management and wetland preservation were also addressed. (R. p. 497, line 43 – p. 498, line 44).

Because it was aware of Appellants Hubert N. Smith, Jr. and Stanley Hix's concerns regarding the potential existence of gravesites on the property, Spano explained that any gravesites located would be addressed prior to seeking final approval. (R. p. 492, lines 12-26). After hearing from the developer, the Commission invited public comments regarding the Project.

Appellant Stanely Hix spoke in opposition to the Project and provided materials evidencing possible graves of individuals who were enslaved at a plantation once occupying the Project site. (R. p. 501, line 18 – p. 502, line 28). In his remarks, Appellant Hix represented to the Commission that DHEC standards for conservation subdivisions require cemeteries and burial grounds be placed in open spaces. Appellant described his erroneous fear that if the Project was approved that night, Spano would immediately begin bulldozing. (R. p. 501, lines 39-42). After hearing the planning staff report, the developer's presentation, and the concerns of members of the public, the Commission approved the Project. (R. p. 504, line 41 – p. 505, line 1).

On May 7, 2024, Appellants filed their appeal from the Commission's approval of the subdivision application for the Anderson Reserve neighborhood, styled *Hubert N. Smith Jr. and Stanley Hix v. Anderson Cnty. Planning Comm'n*, No. 2024-CP-04-00975 ("First Appeal"). (R. p. 49-60).

The First Appeal challenged the Commission's decision on April 9, 2024, approving the preliminary subdivision plat submitted by Spano for Phase II of the Project. Appellants allegedly own land in Anderson County near the Project. (R. p. 50). Appellants did not name Spano as a

defendant in their First Appeal despite Spano’s role as the developer of the Project and fee-simple owner of the real property underlying the Project.

On August 21, 2024, the circuit court heard arguments on Appellants’ First Appeal. (R. p. 387-434). On August 30, 2024, the court issued an order dismissing most of Appellants’ appeal but remanding the case back to the Commission to look into the issue of the potential gravesites. (R. pp.1-4). One of the suggestions for the Commission to consider was allowing “Plaintiffs and their affiliates access to the premises” to evaluate the potential graves. (R. p. 2). The Commission filed a motion to alter or amend arguing that its preliminary approval did not relieve the developer from its obligations, prior to obtaining final approval, to determine:

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).

(R. p. 113). The Commission also attached a copy of Spano’s engineering report addressing the potential gravesites and argued that the report mooted the need for the Commission to evaluate the issue on remand. (R. pp. 116-41). Before the court heard arguments on the Commission’s motion, the developer notified Appellants that they were not to trespass on the premises. At the hearing, the court denied the motion to reconsider and remanded the application to the Commission with “the suggestion that the Planning Commission should require adequate testing to determine whether graves of enslaved persons” are on the premises. (R. p. 10). This suggestion included 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.

(R. pp. 10-11).

At its January 14, 2025, meeting, the Commission held an executive session to receive legal counsel regarding Judge McIntosh's remand order. (R. p. 188, lines 2-31). After the session, and having reviewed Spano's revised plat and updated engineer report, as well as Appellants' engineer reports, the Commission voted unanimously to reaffirm the April 9, 2024, approval of Spano's preliminary subdivision plat for the Project. The Commission further found that Spano "went above and beyond to determine if there were any gravesites on the property." (R. p. 188, lines 40-47).

On February 6, 2025, a hearing on Spano's motion to intervene and the Commission's motion to dismiss was held before Judge McIntosh. 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." (R. p. 447, line 17 – p. 448, line 13). The Court issued a formal Order on February 21, 2025, granting Spano's and the Commission's motions and ruling that the appeal was "hereby dismissed with finality." (R. pp. 16-21).

On February 13, 2025, Appellants filed a second appeal from the Commission's approval of the subdivision application for the Project, 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"). (R. pp. 76-85). Appellants' appeal alleged a 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).

A hearing on the merits of the Second Appeal was held before Judge McIntosh on June 4, 2025, and the court issued a Form 4 order denying the appeal on June 5, 2025. (R. pp. 454-75). On June 10, 2025, the Court issued a formal order dismissing the Second Appeal and affirming the Commission's January 2025 decision. (R. pp. 25-31). Appellants filed a motion to alter or amend on June 16, 2025, asking the Court to omit "several personal and petty remarks" from the formal order. (R. pp. 286-88). On June 30, 2025, the Court entered a Form 4 order denying Appellants' motion to alter or amend and issued a formal order² reaffirming the Commission's January 14, 2025, decision and dismissing the Second Appeal. (R. pp. 32-38). Appellants filed their Notice of Appeal to this Court on July 28, 2025, identifying these four June 2025, Orders.

STANDARD OF REVIEW

The South Carolina Supreme Court established that standard of review for appeals from a local planning commission in *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 656 S.E.2d 346 (2008). In that case, the Supreme Court held that "[b]y statute, the trial court must uphold the Commission's decision unless there is no evidence to support it." *Id.*, 376 S.C. at 174, 656 S.E.2d at 351. The Supreme Court further explained:

We refuse to apply a standard of review different from the any evidence standard in this case, for any other standard of review would be contrary to the legislature's intent in granting a planning commission broad discretion in this area. Furthermore, this standard of review does not violate the Kurschner's due process rights.

Id. The Supreme Court concluded that the "any evidence" standard had been "consistently utilized in these types of cases." *Id.* 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

² This order mirrored the June 10, 2025, order but omitted the "remarks" as requested by Appellants.

or unreasonably,” or if the commission “abused its discretion.” *See Kurschner*, 376 S.C. at 174, 656 S.E.2d at 351.

Five years later, this standard of review was reaffirmed in *Town of Hollywood v. Floyd*, 403 S.C. 466, 744 S.E.2d 161 (2013), in which the Supreme Court cited *Kurschner* and described the standard of review as follows: “By statute, the trial court must uphold a decision by the Planning Commission unless there is no evidence to support it. This Court will uphold the trial judge’s decision unless it was based on an error of law or is not supported by the evidence.” 403 S.C. at 476, 744 S.E.2d at 166 (citation omitted).

ARGUMENT

I. THE ANDERSON COUNTY PLANNING COMMISSION NEITHER ABUSED ITS DISCRETION NOR FAILED TO COMPLY WITH ANDERSON COUNTY ORDINANCES WHEN ON JANUARY 14, 2025, THE COMMISSION APPROVED RESPONDENT SPANO & ASSOCIATES, INC.’S REVISED SUBDIVISION PLAT.

The issue before this Court is not whether the Commission erred when it approved Spano’s original preliminary subdivision plat for Phase II of the Anderson Reserve Project. This is because Appellants did not appeal from the circuit court’s February 21, 2025, order dismissing Appellants’ First Appeal. Instead, the issue is whether the Commission abused its discretion on January 14, 2025, by approving changes made to the Phase II plat as directed by the circuit court’s November 20, 2024, Order of Remand. (R. pp. 9-12). On remand, the Commission considered the narrow issue of whether Spano, in response to Appellants’ First Appeal, adequately addressed the presence of gravesites on the property.

A. Land Use Ordinances Do Not Require Preliminary Subdivision Plats to Address Existing or Suspected Gravesites.

The Commission’s duties when weighing the appropriateness of subdivision development applications are set by the S.C. Local Government Comprehensive Planning Enabling Act of 1994,

S.C. Code Ann. § 6-29-310, *et al.*, and the Anderson County ordinances promulgated therefrom. “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.” Ord. § 24-335.

The subdivision plat submitted with the developer’s application is called preliminary for a reason. Securing the Commission’s approval of the preliminary plat is only the first of many approvals required before the developer may move any soil for the subdivision. It is typical that the reality on the ground (slope, soil types, wetlands, etc.) render the details of the preliminary plat impossible to execute. The developer must return to the Commission staff to ensure that necessary changes do not conflict with the development standards. Moreover, there are no requirements that a preliminary subdivision plat specially provide for details regarding any potential or existing gravesites on the subject parcel.

Anderson County Ordinances §§ 24-335 and 24-336 apply to the preliminary plat approval process and set forth the information that must be contained in developer’s application and preliminary plat for review by planning staff. 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.

The preliminary subdivision plat submitted to the Commission must include 18 categories of information. Ord. § 24-336. None of these categories include requirements related to gravesites. As a conservation subdivision, the Project’s preliminary plat was required to meet additional

design standards set in the county ordinances. *See*, Ord. § 24-336(17) & (18) and §§ 24-401 through 24-408.

After the planning staff reviews the subdivision plat and confirms it meets the standards described above, the planning staff presents the preliminary subdivision plat to the Commission for consideration. In addition to the standards set in §§ 24-401 through 24-411, and the recommendations of planning staff, the Commission must also consider 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.

Ord. § 24-335(3)(d).

None of the statutes or ordinances guiding the Commission's oversight of residential developments require that a preliminary subdivision plat address the disposition of existing or potential gravesites. Therefore, it is not an abuse of discretion to approve such a plat despite information that gravesites may be on the subject property.

B. Appellants Do Not Challenge the Planning Commission's Approval on April 9, 2024, of Spano's Preliminary Subdivision Plat and Appellants Can Show Neither that the Original Plat Failed to Comply with Applicable Standards nor that Approval was an Abuse of Discretion.

On April 9, 2024, the Commission was considering only whether the Project met the threshold requirements for preliminary subdivision plat approval. Appellants can identify no development standards that the preliminary application failed to satisfy. Appellants severely misstate the purposes of the preliminary plat approval process set out in the county ordinances. Because the requirements of these ordinance sections were met with regard to the Project, staff

recommended approval. (R. p. 491, line 10). As to information presented to the Commission during the meeting, Appellants cannot show that by approving the plan the Commission abused its discretion.

Information about the gravesites provided at the Commission's April 9th meeting did not require denying the preliminary application. Even absent Appellants' First Appeal, Spano would still have been required to address the existence of any gravesites in the planning process. Prior to being able to engage in land disturbance activities, the developer would be required to either designate the gravesites 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 S.C. Code Ann. §§ 27-43-10 through 27-43-40. Either way, the existence of gravesites would not prevent preliminary approval. Instead, the developer would be required to modify the subdivision plat, and revise the plat, to reflect the plan for addressing the gravesites before obtaining final approval.

Appellants correctly note that "[d]epending on how the developer approaches the work" elements such as density, buffers, and open space acreage may be affected by changes to the preliminary plat to account for realities such as gravesites. (Appl. Brief, p. 19). Appellants err by insisting that such changes must be reflected in the preliminary plat and by failing to account for subsequent approvals the developer must obtain before breaking ground. There is no statute or ordinance requiring the planning staff to review these details before submitting the preliminary plat to the Commission for approval. Nor have Appellants identified any evidence that the revised plat failed to satisfy the standards for density, buffers, or open space acreage.

At the April 9th meeting, Appellant Stanely Hix spoke³ against the project. (R. pp. 501-02). As part of his general opposition he referred to gravesites and handed up materials for the Commission to review. These materials included the Affidavit⁴ of Kenneth Rhodes, a prior owner of the subject property, historical documents, and a petition of persons objecting to the Project. (R. p. 475-76). Only one other public speaker, Connie Black, mentioned “hidden” grave sites at the Rivoli Plantation. (R. p. 502, line 32 – p. 503, line 21).

C. Appellants Claim, Without Credible Evidence, that the Commission Reapproved the Original Plat Instead of Approving the Revised Plat, Which Provided Adequate Protections for Identified Gravesites.

Without pointing to any credible evidence in the record, Appellants claim⁵ that instead of approving the revised plat the Commission simply reapproved the original plat and that in so doing, the Commission “has not required the developer to protect Graveyard Hill.” (Appl. Brief, p. 20). Whether Appellants believe this was simply done in error or was the result of subterfuge, they do not say. Appellants raised this bizarre claim with Judge McIntosh in the hearing on the Second Appeal. (R. p. 461, lines 6-18).

In support of their claim that the Commission reapproved the old plat, Appellants point to the Affidavit of Stanely Hix. (Appl. Brief, pp.14-15; R. pp. 275-80). Appellant Hix claims that after the January 14, 2025, meeting, he submitted a FOIA request to Anderson County “requesting a copy of the map that the Planning Commission had approved in the January 14, 2025, meeting.” (R. p. 275). He further states that in response, he was provided with a copy of the plat dated March

³ Appellants’ comments at the meeting are not testimony as Appellant was not under oath when the Commission heard public comments about the Project.

⁴ The Affidavit of Stanely Hix, dated June 2, 2025, was not provided to the Commission for their consideration of the Project on April 9, 2024.

⁵ Appellants further argue that because the Commission “reaffirmed the Old Map” instead of the “New Drawing” it committed a felony in violation of § 16-17-600.

21, 2024, which is the original, unrevised plat. (R. pp. 275-76). A copy of the county’s FOIA response to Appellant Hix is not in the record.

The circuit court questioned the Commission’s counsel and Alesia Hunter, the planning staff director, during the June 4, 2025, hearing on the Second Appeal. (R. p. 454-74). Ms. Hunter confirmed that the revised plat⁶ was the version approved at the January 14 Commission meeting. (R. p. 464, line 7 – p. 468, line 16); Ord. § 24-51 (“All matters of interpretation shall be decided by the development standards manager, except where the planning commission is called upon to do so”). Appellants complain that the lot numbers on the Exhibit 4 to Spano’s pre-hearing brief supports their contention that the Commission approved the old plat. However, comparing the revised plat with the protective covenant plainly shows that the two exhibits are describing the same measures to protect the gravesites.

Spano & Associates, Inc. Pre-hearing Brief, dated June 1, 2025 (R. pp. 150-259)

Exhibit No. 4, (R. p. 184).

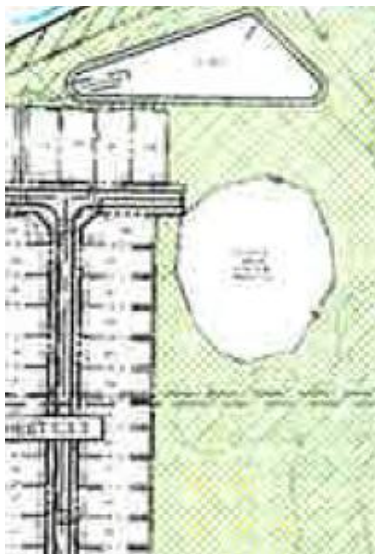
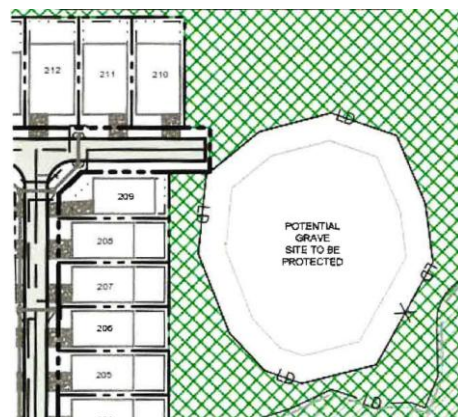


Exhibit No. 7, (R. p. 259).



⁶ The revised map was referenced at the hearing as Exhibit 4 to Spano’s pre-hearing brief, dated June 1, 2025. (R. p. 466, line 12 – p. 467, line 12).

Based on Ms. Hunter’s confirmation that the revised plat was the approved drawing, the court concluded that the Commission were “doing exactly what [Appellants have] asked them to do and that is to protect these gravesites.” (R. p. 469, line 15 – p. 470, line 14). After being unable to provide the court with any error of law supporting their appeal, counsel for Appellants conceded that his “criticism at this juncture is not directed toward the developer.” (R. p. 471, line 19 – p. 472, line 15). Appellants cannot argue that the revised plat fails to protect gravesites because, as they conceded in their pre-hearing brief, Spano “presented to the Commission a new map of the Anderson Reserve subdivision, protecting Graveyard Hill.” (R. p. 265).

D. Approval of Spano’s Revised Subdivision Plat at the January 14, 2025, Commission Meeting was Not an Abuse of Discretion.

At its January 14, 2025, meeting, the Commission held an executive session to receive legal counsel regarding Judge McIntosh’s remand order. (R. p. 188, lines 2-31). After the session, and having reviewed Spano’s revised plat and updated engineer report, as well as Appellants’ engineer reports, the Commission voted unanimously to reaffirm the April 9, 2024, decision approving Spano’s preliminary subdivision application for the Project. The Commission further found that Spano “went above and beyond to determine if there were any grave sites on the property.” (R. p. 188, lines 40-47). The Commission, on January 14, did not abuse its discretion as it was acting pursuant to Judge McIntosh’s remand order suggesting that the Commission review the changes made to Spano’s preliminary subdivision plat in response to Appellants’ First Appeal.

Moreover, the Commission based its decision on sufficient record evidence including Spano’s and Appellants’ engineering reports. On the record before the Commission, there was some written evidence that enslaved persons were buried somewhere on the property Spano seeks to develop. (R. pp. 117-34). The actual location and number of graves is unknown. (R. pp. 118-19). Also unknown are the identities of the person who may have been buried there. Whether the

graves belonged to enslaved folks on the plantation, or perhaps Native Americans, is a matter of speculation. There was evidence in the form of engineering reports indicating subsurface features consistent with gravesites. (R. pp. 135-40). However, the reports note that due to the long passage of time and soil conditions, those buried in the graves have likely returned to dust. (R. p. 118).

E. The Revised Subdivision Plat Complied with Design Standards and the Commission’s Consideration of the Plat at its January 14, 2025, Meeting Did Not Require Procedures Such as the Planning Staff’s Recommendation or a Public Hearing.⁷

The fact that the Commission reviewed the revised plat at the January 14th hearing undermines Appellants’ arguments that the Commission committed any error of law when it reapproved Spano’s preliminary subdivision application. Because the Commission, acting in accordance with the circuit court’s remand order in the First Appeal, approved the revised plat, Appellants’ arguments that the Commission failed to require Spano “file and publish a Master Plan and Master Plat,” failed to present the master plat to the public, and failed to have the subdivision administrator review the plat to “fulfill the ... 18 separate requirements ... of section 24-336” have no basis whatsoever. (Appl. Brief, pp. 18-19). All of these procedures were followed when the Commission approved the preliminary subdivision plat on April 9, 2024, and there is no evidence in the record that the planning staff failed to review the revised plat prior to the January 14, 2025, meeting.

Appellants are essentially arguing that the Commission staff did not apply the 18-point review process to the revised plat. (Appl. Brief, pp. 18-19). There is no evidence in the record that

⁷ Appellants argue that under § 24-367 the Commission’s approval of Spano’s preliminary subdivision plat is null and void because a final plat was not submitted within one year of preliminary approval. (Appl. Brief, pp. 21-22). Although not a claim against the Commission, Appellants are incorrect. Under the enabling act, a “vested right is established for two years upon the approval of a site specific development plan.” S.C. Code Ann. § 6-29-1530(A)(1).

the Commission staff failed to review the revised plat.⁸ After a preliminary subdivision plat is approved by the Commission, the developer must continue to work with the planning staff to provide supplemental information, revise portions of the preliminary plat, and submit a final plat for approval. Accordingly, the Commission was under no obligation to follow the procedures the absence of which Appellants cite as error.

Because the revised plat was merely an alteration to the preliminary subdivision plat submitted with the developer's application, the planning staff was not required to present the application to the Commission again for preliminary approval. Instead, on January 14, 2025, the Commission met in executive session to receive privileged legal counsel regarding the Appellants' First Appeal and the court's order remanding the revised plat back to the planning staff. This process was completed appropriately as the procedures cited by Appellants were performed when the preliminary subdivision plat was presented to the Commission at its April 9, 2024, meeting.

Changes made to a preliminary subdivision plat do not require public notice or approval by the Commission. Moreover, the ordinance requires developers to submit supplemental information to the planning staff after preliminary approval. Ord. § 24-337. This supplemental information, which addresses changes to the preliminary subdivision plat as presented at the Commission's public meeting, includes profiles for dams on lakes or ponds, centerline profiles for roads, surface drainage plans, and stormwater management and sediment control plans. None of these supplemental changes require notice to the public, nor approval by the Commission.

After obtaining preliminary approval, and before work can begin on the project, developers must submit a final subdivision plat for approval by the planning staff. Ord. § 24-367(b) & (e).

⁸ It is simply inconceivable that the developer would go to the expense of revising their plat to satisfy Appellants' First Appeal only to resubmit the old plat for "reapproval."

Final plats are approved by the planning staff without a public hearing before the Commission. Ord. § 24-367(e) (“the planning commission may delegate authority to the subdivision administrator to approve or disapprove final plats”).

The final plat submission must also include any deed restrictions or restrictive covenants applicable to the subdivision. Ord. § 24-367(b)(3). All final plats require ten additional categories of detail not required of preliminary subdivision plats. Ord. § 24-368. As for conservation subdivisions, satisfying the final plat approval standards requires significant additional revisions to the plat including an open space table, open spaces delineated by metes and bounds, open space easements, and subdivision covenants. Ord. § 24-367(c). The procedures and public notices Appellants point to are simply not required by the Commission and its planning staff when handling preliminary subdivision applications.

Appellants further argue that 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.” (Appl. Brief, p. 18). Anderson County Ordinance § 24-367, however, applies only to final applications and does not require a “Master Plan and Master Plat” for preliminary subdivision applications. The phrase “master plan” appears only once in Article III of the ordinance chapter on land use. § 24-367(a)(1) (“[c]onservation subdivisions may be done in phases, however all phases must be a part of a conservation design master plan that must be approved at the beginning of the development process”). As noted above, Phase I of Spano’s conservation development was approved in May of 2023. Moreover, the subdivision plat at issue in this appeal was a preliminary subdivision plat, not a final plat.

Finally, Appellants argument that the revised plat failed to meet the open space requirements of § 24-401(7) is without merit. As Appellants conceded in their pre-hearing brief,

the developer “presented to the Commission a new map of the Anderson Reserve subdivision, protecting Graveyard Hill.” (R. p. 265). The conservation design standards applicable to the Project require the preservation of open space⁹ to meet objectives including the maintenance and preservation of “historic sites and structures that serve as significant visible reminders of the county's social, archeological, and architectural history.” Ord. § 24-401(7). However, there is no requirement that gravesites be included in a conservation subdivision’s open spaces. Moreover, specific information regarding the open spaces at the Project will not be subject to review by the planning staff until the developer submits its final subdivision plat. Ord. § 24-367(c).

II. NEITHER COMMON LAW, CRIMINAL CODES, NOR STATUTORY STANDARDS GOVERNING THE TREATMENT OF DEAD BODIES, GRAVES, AND BURIAL SITES CONTROL THE ANDERSON COUNTY PLANNING COMMISSION’S CONSIDERATION OF PRELIMINARY SUBDIVISION PLATS.

Inarguably the cultural, historic, and indeed moral interests attending with the treatment of the potential gravesites of enslaved persons, or those of any persons, are extremely significant and worthy of careful consideration. However, the duties of the Commission in the context of weighing the appropriateness of subdivision development applications are necessarily more modest in their scope. Those duties are set by the S.C. Local Government Comprehensive Planning Enabling Act of 1994, S.C. Code Ann. § 6-29-310, *et al.*, and the Anderson County ordinances promulgated therefrom.

Appellants invite this court to expand without definable boundaries the Commission’s statutory charge to undertake “plans and programs ... designed to promote public health, safety,

⁹ “Open space means undeveloped land suitable for low impact resource-based outdoor recreation and/or conservation purposes. This definition can include land with environmental value such as preserve/preservation lands, and can also include land required or desired to provide for aesthetic and scenic value.” Ord. § 24-308.

morals, convenience, prosperity, or the general welfare as well as the efficiency and economy....” S.C. Code Ann. § 6-29-340(A). That the developer of property might someday engage in conduct proscribed by law is neither within the scope of review nor within the predictive powers of the members of the Commission. And this is the case whether the property under consideration has potential gravesites or any of an innumerable variety of features (whether environmental, cultural, aesthetic, religious, or otherwise) that are subject to state and federal statutes and regulations.

For instance, the parcel that is the subject of the Project contains wetlands. (R. p. 184). The logic of Appellants’ exceptions regarding the potential gravesites would equally apply if they instead cited the possibility that the developer would violate any of the numerous legal obligations related to the handling of wetlands. As with gravesites, there are legal procedures and remedies available to address violations of such land use regulations that are more properly entrusted to local, state, and federal agencies. Burdening the Commission with the duty to police all potential land use abuses would render it useless for its critical, but limited, role in the government’s function of administering a civil, orderly, free, prosperous, and humane society.

Fortunately, the Court need not reach these issues. Because the common law arguments contained in Appellants’ Brief were not raised to or ruled upon by the trial court, and Appellants’ motion to alter or amend did not ask for that ruling. Similarly, the trial court’s June 10, 2025, and June 30, 2025, orders did not address Appellants’ claims under §§ 16-17-600 and 27-43-10. Because their motion to alter or amend did not ask for a ruling on these issues, Appellants have failed to preserve their common law and statutory arguments for this Court’s review. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998); *see also Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 23-24, 602 S.E.2d 772, 779-80 (2004).

A. Appellants Fail to Demonstrate that the Common Law Regarding the Invasion or Disturbance of Gravesites Imposes a Duty on the Planning Commission when Evaluating a Preliminary Subdivision Application.

Appellant fails to demonstrate that the case law cited for the purpose of “establish[ing] the level of respect and the presumption of continuing care of burial grounds and remains” imposes duties on the Commission above and beyond the statutes and ordinances implementing the County’s comprehensive plans to guide land development. (Appl. Brief, p. 11). They argue the Commission “failed to meet the threshold of respect and care demanded” by South Carolina law. (Appl. Brief, p. 13). Appellants have not, and cannot, explain how the Commission, which exists by virtue of an enabling statute setting forth the scope of its duties, and acting pursuant to ordinances defining the criteria the Commission is to apply, is bound by laws of general application and addressed to persons who physically interact with dead bodies, graves, and gravesites.

B. Section 16-17-600 of the Criminal Code Does Not Implicate the Commission’s Consideration of Preliminary Subdivision Plats and Section 27-43-10 Imposes No Duties Upon the Commission.

Appellants’ Second Appeal from the Commission’s January 14, 2025, decision 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.” (R. p. 80, para. 21-22). They also claim that the Commission’s approval of Spano’s preliminary subdivision plat at the April 9, 2024, meeting resulted in the Commission’s criminal violation of § 16–17–600. Appellants further contend that because the Commission “reaffirmed the Old Map” instead of the “New Drawing” it committed a felony in violation of § 16-17-600. (Appl. Brief, pp. 16-17).

Understandably, the cited statutes have received little attention in our case law. The issue for this Court is whether the statutes proscribing certain actions regarding to gravesites are within

the purview of the Commission's statutory duties. They are not. Section 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." Section 27-43-10 establishes procedures and requirements for the removal of graves from an abandoned cemetery or burial ground. There is no precedent for applying this statute to the actions of a quasi-judicial body acting in the course of its statutorily defined roles. Nor can Appellants explain how the statutes, even if that have some application to the facts here described, provide a basis for their claim for relief.

Because it is a criminal statute, § 16-17-600 provides only for criminal sanctions. *Dorman v. Aiken Commcns., Inc.*, 303 S.C. 63, 67, 398 S.E.2d 687, 688–89 (1990) (refusing to find a private right of action for "a criminal statute which provides only for criminal sanctions" because "[t]he primary consideration in deciding whether a private cause of action should be implied under a criminal statute is legislative intent"); *Trask v. Beaufort Cnty.*, 392 S.C. 560, 570, 709 S.E.2d 536, 541 (Ct. App. 2011) (finding section 16-17-600 creates neither a duty of due care nor a private right of action for its breach).

III. RESPONDENT SPANO & ASSOCIATES, INC. WAS A NECESSARY PARTY TO APPELLANTS' FIRST APPEAL FROM THE APPROVAL OF THIS PRELIMINARY SUBDIVISION APPLICATION AND HAD STANDING TO INTERVENE IN THAT ACTION.

A. Spano's Standing to Intervene in the First Appeal is Not Properly Before this Court.

Respondent Spano filed its Motion to Intervene in the First Appeal, styled *Hubert N. Smith Jr. and Stanley Hix v. Anderson Cnty. Planning Comm'n*, No. 2024-CP-04-00975. (R. pp. 142-46). The circuit court granted that motion on February 21, 2024, when it granted the Commission's motion to dismiss. (R. pp. 16-21). Appellants, however, did not appeal from the circuit court's

February 21, 2025, order dismissing Appellants' First Appeal. Accordingly, Appellants' objections to that order were not preserved for appeal.¹⁰ Moreover, Appellants' mooted their criticisms of the circuit court's order when, in the Second Appeal, they named Spano as a party-defendant and served their appeal in case number 2025-CP-04-00328.

B. A Subdivision Development Applicant is a Necessary Party to an Interested Party's Appeal from the Approval of a Preliminary Subdivision Application.

Appellants argue that the trial court erred when it granted Spano's motion to intervene. (Appl. Brief, pp. 23-25). The statute setting forth the appeal and pre-litigation mediation procedures for challenging a planning commission's decisions plainly gives a property owner standing in such an action.

A property owner whose land is the subject of a decision of the planning commission may appeal by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-1155.

Section 6-29-1150(D)(2). The statutes also forecast the need for persons or entities other than the property owner to intervene in an appeal from a planning commission decision.

A person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person has a substantial interest in the decision of the planning commission.

Section 6-29-1155(A). Such interested parties may include a developer, the holder of a contract for deed conditioned on an application's approval, or concerned citizens. *Id.*

Under S.C. R. CIV. P. 24(a), an applicant can seek intervention either as a matter of right or with the court's permission.

Upon timely application anyone shall 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

¹⁰ The six orders before this Court were all issued in the Second Appeal (case number 2025-CP-04-00328).

action, and the disposition of the action may impair or impede their ability to protect that interest.” (emphasis added). The court may also allow 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), SCRPC.

The South Carolina Supreme Court has conveyed a broad view of the S.C. R. Civ. P. 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)”).

Spano, having obtained permission to proceed with the Project, had no need to appeal from the Commission’s April 9, 2024, approval of its application. They promptly appeared by motion to intervene less than six months after Appellants filed the First Appeal. (R. pp. 142-46). Spano’s motion followed the trial court’s order remanding the preliminary subdivision plat approval back to the Commission and before entry of a formal order concerning the Commission’s motion to reconsider on November 20, 2024. (R. pp. 9-12).

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).

Appellants have not preserved their arguments against the circuit court’s order allowing Spano to intervene. Nor can Appellants show how allowing that intervention was an error of law.

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.