

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS )  
FIFTEENTH JUDICIAL CIRCUIT )

TRISTAR INVESTORS, INC., )  
MINERVA REALTY, LLC, and )  
ANGELINE JOHNSON, )  
Plaintiffs, )

Civil Action No. 2012-CP-26-8652 )

v. )

THE HORRY COUNTY COUNCIL, and )  
AMERICAN TOWERS, LLC, )  
Defendants. )

ORDER ENTERING FINAL )  
JUDGMENT AGAINST PLAINTIFFS )

FILED )  
HORRY COUNTY )  
13 MAY 21 2:30 )  
MELANIE HENNING )  
CLERK )  
COURT )

This matter comes before the Court upon hearing of the merits of the case filed by TriStar Investors, Inc. ("TriStar"), Minerva Realty, LLC ("Minerva"), a wholly owned subsidiary of TriStar (TriStar and Minerva may be referred to collectively as "TriStar/Minerva"), and Angeline Johnson ("Johnson") (TriStar, Minerva, and Johnson may be collectively referred to as "Plaintiffs") appealing Resolution No. R-73-12 adopted by the Horry County Council (the "Horry County Council"). A hearing was held before me on April 26, 2013 in which arguments were presented by counsel for all parties in this matter.

Plaintiffs are represented by Susan MacDonald, Esquire, with Nelson, Mullins, Riley and Scarborough, and Morgan Martin, Esquire, with the Law Offices of L. Morgan Martin, P.A. Defendant Horry County is represented by Emma Ruth Brittain with Thomas & Brittain, P.A. Defendant American Towers, LLC is represented by Tommy Brittain, Esquire, with The Brittain Law Firm, P.A.; David Slough, Esquire, with Nexsen Pruet, LLC; and Jonathan Yates, Esquire, with Hellman, Yates & Tisdale, P.A. The issues have been heard and this decision is hereby rendered.

**FINDINGS OF FACT**

1  
MHC

Defendant American Towers, LLC, f/k/a American Towers, Inc. ("American Towers") operates a communications tower at the property located at the corner of Huggins Road and Route 9, Myrtle Beach, South Carolina 29572.

1. On or about August 31, 2012, American Towers filed an application with supporting materials with Horry County's Planning & Zoning Department, seeking to relocate American Towers' existing tower to a nearby property located at 215 Huggins Road, Loris, South Carolina.

2. On October 16, 2012, the Horry County Council held a public hearing to vote on the matter. A representative for Defendant American Towers appeared at that meeting and made a presentation. A representative for Plaintiffs also appeared at that meeting and made a presentation.

3. On October 16, 2012, the Horry County Council unanimously approved Resolution No. R-73-12 authorizing Defendant American Towers to relocate its existing communications tower to a nearby property. Horry County Council amended Resolution R-73-12 to include a requirement that Defendant American Towers remove the existing tower within 120 days of final inspection and approval of the new tower. (All further references to R-73-12 by the Court herein include the amendment).

4. Plaintiffs initiated this action on November 8, 2012, by filing their Summons and Complaint in the Horry County Court of Common Pleas. All parties consented to the hearing of this matter by the undersigned in the Georgetown County Courthouse, Georgetown, South Carolina, with no objection as to the hearing venue.

#### CONCLUSIONS OF LAW

<sup>2</sup>/MHC

1. This Court's scope of review in this matter is limited. As conceded by Plaintiffs, the decision of the Horry County Council must be affirmed unless arbitrary, unreasonable, an abuse of discretion, or in excess of lawfully delegated power. As also conceded by Plaintiffs, the evidence in this case is limited to the record before the Horry County Council. See Gay v. City of Beaufort, 364 S.C. 252; 254, 612 S.E.3d 467 (Ct. App. 2005)(City council decision should not be disturbed unless decision is arbitrary, unreasonable, or obvious abuse of discretion); McSherry v. Spartanburg County Council, 371 S.C. 586, 589; 641 S.E.2d 431 (2007) (in reviewing the discretionary decision of a legislative body, our courts are loath to substitute their judgment for that of elected representatives") (citation omitted).

2. The Court has reviewed the record before it and concludes that Horry County Council's unanimous decision enacting R-73-12, was based on a thorough documented review and record prepared by the Horry County Planning and Zoning Department; accordingly, I find that the relief requested by Plaintiffs is not warranted, which finding is further supported by the reasons set forth below.

3. In approving Resolution No. R-73-12, Horry Council County did not act arbitrarily, unreasonably, in an abuse of its discretion, or in excess of lawfully delegated power. American Towers' application did not seek to operate multiple towers but to relocate its existing tower. The record, including Defendant TriStar's application and Horry County Council's amendment to the Resolution requiring demolition of the existing tower within 120 days of final inspection and approval of the new tower, clearly establishes that American Towers' new tower approved by Horry County Council Resolution No. R-73-12 is a re-location rather than a co-location.

4. The Court further finds that approval of the tower as a relocation is within the lawfully delegated power of Horry County Council, and, based on the record before the Court, is neither arbitrary or capricious nor an abuse of discretion. The Court finds the restrictive reading urged by Plaintiffs is not supported by the language of the County's zoning ordinance

**THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. The decision of the Horry County Council is passing Resolution No. R-73-12 is hereby affirmed. This appeal of Resolution Horry County Council No. R-73-12 is denied. Final judgment is entered in this case against Plaintiffs TriStar Investors, Inc., Minerva Realty, LLC, and Angeline Johnson and in favor of Defendants the Horry County Council and American Towers, LLC.

2. The Temporary Restraining Order and Preliminary Injunction entered in this case are void and no longer in effect. Paragraphs 1-3 of the Order Granting Temporary Restraining Order And Preliminary Injunction And Reforming Caption are hereby vacated and declared null and void.

3. Defendants and their subsidiaries, sister or parent companies, affiliates, and agents may take action in reliance upon Horry County Council Resolution No. R-73-12.

4. Horry County Council Resolution No. R-73-12 is no longer stayed.


5. Defendants and their subsidiaries, sister or parent companies, affiliates, and agents may issue or accept any building permit or other administrative or regulatory permit or application related to Horry County Council Resolution No. R-73-12 or the new tower.

6. This case is dismissed with prejudice.

7. This Order shall be a final order.

4/mtc

AND IT IS SO ORDERED.

  
The Honorable Benjamin H. Culbertson  
Fifteenth Judicial Circuit

This 8<sup>th</sup> day of May, 2013

**MAILED**  
5-21-13 to all  
parties not in default  
Pell