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June 3, 2013

Via Fax (803.734.1829) and Hand Delivered

The Honorable H. Bruce Williams
The South Carolina Court of Appeals
1015 Sumter Street, Third Floor
Columbia, South Carolina 29201

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JUN 3 2013
SC Court of Appeals

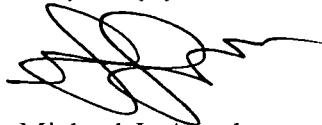
RE: **Petition for *Ex Parte* Supersedeas Relief**
TriStar Investors, Inc., Minerva Realty, LLC, and Angeline Johnson v. The
Horry County Council, and American Tower Corporation
Civil Action No. 2012-CP-26-08652
Our File No. 39776/01501

Dear Judge Williams:

Pursuant to Rules 241(d)(2), 241(d)(5), and 241(d)(6) of the South Carolina Appellate Court Rules, enclosed please find an original and three copies of a Petition for *Ex Parte* Supersedeas Relief in the above-referenced matter.

I ask that a clocked copy be returned to me as soon as possible. Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Michael J. Anzelmo

MJA:jlee
Enclosures (original and 3 copies as stated—fax copy as courtesy copy)

The Honorable H. Bruce Williams
June 3, 2013
Page 2

bcc: L. Morgan Martin, Esquire
David C. Bruening, Esquire
Melissa L. Montgomery, Esquire
Angeline D. Johnson

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

68582

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

RECEIVED

JUN 03 2013

SC Court of Appeals

Case No. 2012-CP-26-8652

TriStar Investors, Inc., Minerva Realty, LLC, and
Angeline Johnson, Appellants,

v.

The Horry County Council and American Towers,
LLC, Respondents.

Petition for *Ex Parte* Supersedeas Relief

TriStar Investors, Inc. ("TriStar"), Minerva Realty, LLC, a wholly owned subsidiary of TriStar, and Ms. Angeline Johnson (together, "Appellants") submit this Petition for Supersedeas under Rule 241 of the South Carolina Appellate Court Rules.

Appellants respectfully request a writ of supersedeas to suspend execution of the Court of Common Pleas' judgment and to preserve the status quo pending appeal. Without supersedeas, the subject matter on appeal will be rendered moot. By contrast, granting supersedeas will cause no harm to Respondents American Towers, LLC

("American Tower") or the County Council.¹ In support of this request, Appellants would respectfully show as follows:

GROUNDS FOR *EX PARTE* RELIEF

1. This matter warrants *ex parte* relief pursuant to Rule 241(d)(6), SCACR, from this Court.

2. As shown fully herein, the appealed decision wrongly permits American Tower to build a new tower nearby and requires American Tower to tear down the existing tower on Appellants' property.

3. If there is no supersedeas, American Tower will immediately tear down the tower that is the subject of appeal.

4. Moreover, exigent circumstances exist that warrant immediate supersedeas relief from this Court.

5. On Thursday, May 30, 2013, Respondents obtained the necessary construction permit for the new tower that would allow immediate construction of the tower at issue in this appeal by American Tower. *See* Exhibit A, attached hereto.²

6. As Respondents admitted in the trial court, deconstruction of the existing tower can take as few as 5 days. *See* Exhibit F at p. 10.

7. Therefore, the normal time frames for supersedeas are insufficient to preserve the issues on appeal.

8. Undersigned counsel certifies, as required by Rule 241(d)(6)(B), SCACR, that *ex parte* relief is required in this action because notice cannot be given,

¹ Respondent Horry County Council did not brief its position below but opposed supersedeas to the Court of Common Pleas at the May 31, 2013 hearing.

² Respondents did not inform Appellants of the permit until the supersedeas hearing before the trial court on May 31, 2013.

nor could Respondents be afforded the customary 10 days to respond to this Petition, as a result of the time frame associated with destruction of the existing tower that is at issue in this appeal.

9. Finally, Respondents will not be prejudiced by this grant of *ex parte* supersedeas relief because Respondents have potential review of such a ruling as allowed by Rule 241(d)(7), SCACR.

SUMMARY

10. This matter presents a quintessential case for supersedeas. The appeal will determine the status of an existing, fully-functioning cellular tower on Appellants' property. The appealed decision wrongly permits American Tower to build a new tower nearby and requires American Tower to tear down the existing tower on Appellants' property. If there is no supersedeas, American Tower will tear down the tower that is the subject of appeal and lock its tenants (wireless carriers including Verizon Wireless, T-Mobile, and Horry Telephone) into a new location. Even if Appellants win on appeal, those tenants are not part of this case and cannot be compelled to move back, and TriStar's relationships with those tenants will be harmed. Destroying the tower that is the subject of this appeal would render the appeal moot, and any victory for Appellants would be hollow.³ This is exactly the sort of irrevocable consequence that supersedeas is meant to prevent. The irony of this case is that

³ The issue in this appeal is whether the Horry County Council erred by violating county ordinances in issuing a permit to American Tower authorizing the destruction of the current America Tower cell tower and construction of the new tower. Once the new tower is constructed, the issue of whether the Horry County Council erred would be moot. The issue is not whether the parties' financial situation is impacted by the permit decision as argued by Respondents to the trial court. The fact that TriStar's rental income or other revenues remain unchanged during the appeal is immaterial because the issue on appeal is not monetary, but the subject of injunctive relief to prevent irreparable future harm. The trial court erred in denying supersedeas on this incorrect basis. The sole issue is whether the Horry County Council made a correct decision to allow the new construction and deconstruction of the existing tower by Respondents. That issue will be mooted if supersedeas is not granted by this Court.

American Tower never could and never did demonstrate any need for a new tower; it certainly cannot show now that it will suffer any real harm by waiting to see who prevails on appeal.

11. The facts are indisputable: American Tower has operated the current tower at the current site for seventeen years. The tower is fully functioning and has served Horry County consistently without any prior action by American Tower or the County to move the tower. American Tower recently renewed its lease on the current tower through 2030, demonstrating that there is nothing wrong with the site and no technical reason compelling an immediate move. The truth is that American Tower only acted to destroy the current tower and build a new tower on another site when it learned that its competitor, TriStar, had purchased an easement that would give it the potential to operate its own tower on that site once American Tower's lease expired. And it is undisputed that American Tower's rights at the current site are protected through 2030, when its lease expires – long past the pendency of any appeal. There is simply no pressing need to move the tower and destroy TriStar's due process right to appeal.

12. Nor will American Tower suffer any harm from waiting to destroy the tower it recently secured to use for another 15 years. Cell phone service will continue as it has for seventeen years, and American Tower will continue to enjoy the benefits of operating the existing tower. TriStar has offered to post a bond for the only actual costs American Tower has identified from a stay pending appeal – the cost of keeping its lease option open for the second site (where the new tower will go if TriStar loses on appeal) and the cost of storing steel for the new tower (even though that steel is

obviously fungible, and there is no need to store it when American Tower reports that it is constantly putting up new towers in the area). When asked by the Court of Common Pleas to identify any harm the County Council would suffer by pausing moving the tower pending the appeal, the Council conceded there was none.

13. Yet despite no urgency and no harm, American Tower obtained a construction permit for the new tower *this past Thursday*, in the face of TriStar's supersedeas hearing set with the Court of Common Pleas. See Exhibit A, attached hereto. Why the rush? To make the destruction of the tower a done deal, so TriStar's opportunity for a meaningful appeal will be eliminated along with the existing tower.

14. And American Tower's own argument against supersedeas to the Court of Common Pleas shows the contortions of their position. American Tower argued that *destruction* of the tower was the status quo and that, if American Tower lost on appeal, it could always pay to tear down the new tower and *rebuild* the old tower. This turns common sense on its head. And it is also wrong: once the carrier tenants are settled on a new tower, there is no forcing them to return to a rebuilt original tower. They would enjoy a right of quiet enjoyment as tenants. The carrier tenants are not parties to this matter, so American Tower's self-serving "offer" is not only contorted but impossible. Moreover, American Tower does not control whether the tower could be moved back to the Johnson property because American Tower cannot guarantee approval to move the tower. Nor can American Tower guarantee the return of the customers to the existing tower arrangement.

15. American Tower also argues that any damages to TriStar can be liquidated and paid retrospectively. But American Tower itself argued at the hearing

that its relationships with these carriers represent “intangible” value. TriStar is American Tower’s competitor and has the same relationships with these carriers and values those intangible relationships similarly. That is why TriStar sued for injunctive relief, not money damages. And that is why destroying the tower now cannot be liquidated and is ripe for supersedeas. It is why American Tower is so desperate to destroy the tower before TriStar can appeal.

16. TriStar’s position on appeal is simple. It secured an easement on Ms. Johnson’s property in Horry County that would allow it to negotiate with American Tower or put up its own tower at the end of the current lease. As a result, the local Horry County resident, Ms. Johnson, would share a far greater percentage of the cellular carrier rents than American Tower ever gave her – *by a factor of three or more*. TriStar relied on the plain terms of Horry County ordinances to make this investment in Ms. Johnson and her land – TriStar invested in the property, giving the local resident, Ms. Johnson, the chance to enjoy a far greater share of the wireless profits, because local ordinances prevented American Tower from simply building a new tower where two perfectly good towers already existed, then destroying one of them, simply to make an example out of a local resident for bargaining with a company that would give the local resident more of a share of the profits. *See* paragraph 24, *infra*. The permit that American Tower ultimately received to build a new tower, conditioned on destruction of the existing tower, violated those county ordinances and robbed TriStar of its due process right to rely on the law as written. It is undisputed that American Tower did not present the required evidence under the ordinances, and thus TriStar was never given its opportunity to show why that

evidence was flawed. This denial of due process damaged TriStar's investment and its future expected revenue stream from the site.

17. The Court of Common Pleas denied supersedeas here for a single reason, which TriStar respectfully submits was error. *See* Ex. B (May 31, 2013 Order). The court reasoned that TriStar could not be harmed if the tower is destroyed immediately because TriStar's expected benefits from operating a tower on site were "anticipated" – that is, expected and contingent rather than immediate. But courts cannot and do not ignore damages simply because they are based on expected or contingent benefits. Indeed, from lost profits damages to expectation damages, courts frequently and universally recognize losses of benefits yet to accrue. *All future benefits are contingent on unknowns, but only one scenario here guarantees that TriStar will never realize the benefits of its investment: destruction of the tower now, during the appeal.* Denial of supersedeas was error.

18. The requested relief is thus straight-forward. Maintaining the status quo harms no one. American Tower will continue to operate the same site it has operated for seventeen years and that it recently secured for the next fifteen years. Destruction of the tower immediately serves no end other than rendering TriStar's appeal moot. A bond is easily quantifiable – indeed, American Tower itself proposed a \$25,000 bond. This is a classic scenario for supersedeas, and TriStar respectfully requests a stay pending appeal.

PROCEDURAL HISTORY

19. This lawsuit began as an appeal from a decision by the Horry County Council (the "Council") allowing American Tower to build a new tower and requiring

that American Tower remove the fully-functioning tower it currently operates on Ms. Johnson's land. Appellants requested a temporary restraining order and a preliminary injunction preventing American Tower from removing the existing cell tower and constructing the new tower until this matter is resolved.

20. On March 26, 2013, the Court of Common Pleas granted the temporary restraining order and preliminary injunction. On April 26, 2013, the lower court held a hearing on Appellants' request for a permanent injunction. On May 21, 2013, the lower court entered judgment against Appellants and denied their application for a permanent injunction. Appellants timely filed a Notice of Appeal from that judgment and moved the lower court to enter a writ of supersedeas. On May 31, 2013, the Court of Common Pleas held a hearing and denied the supersedeas motion. *See Ex. B.*

21. To preserve the status quo and prevent Appellants' appeal from becoming moot, Appellants ask this Court to grant a writ of supersedeas suspending the lower court's judgment—and any orders, rulings, or decrees leading up to or forming the basis of that judgment that are in any way adverse to Appellants—for the duration of Appellants' appeal. *See* Rule 62(a), (c)-(d), SCRCPP; *see also* Rules 205, 242(d)(11), SCACR.

FACTUAL BACKGROUND

22. American Tower currently operates a cell tower on Ms. Johnson's property under a lease that, according to its recorded interests per the County records, runs through January 13, 2030 (the "Lease"). *See* American Tower's Memorandum of Lease Amendment, attached here as Exhibit C. In June 2010, Ms. Johnson and TriStar entered into an easement agreement (the "Easement") that

allows TriStar to control telecommunications activities on Ms. Johnson's property at the expiration of the Lease.

23. After the Lease expires, TriStar intends to continue operating the existing tower site on Ms. Johnson's property. As the tower-site operator, TriStar would provide all of the services currently provided by American Tower, but at substantially lower cost to the wireless carriers and at greater benefit to Ms. Johnson. The Easement gives TriStar the right to either negotiate use of the existing tower or operate its own tower on the site once American Tower's lease expires.

24. After TriStar entered into its agreement with Ms. Johnson for the Easement, American Tower went to the Council and sought approval for a permit to build a new tower down the road from its existing, fully-functioning tower. Based on American Tower's own public statements, it is clear they did this to make an example out of Ms. Johnson for doing business with TriStar and in an attempt to serve as a "demonstration" to other local landowners who do business with TriStar. American Tower's CEO, James Taiclet, has publicly confirmed that the company uses this tactic when its leases with property owners come up for renewal. In a presentation to investment analysts last year, Mr. Taiclet said that "[t]he leverage on our side is that we can move the tower nearby and go onto other leased land because we own the customer contract." See Edited Transcript AMT — American Tower Corp at Citi Global Property CEO Conference, attached here as Exhibit D at 7. When he was asked what the costs would be of moving a tower, he said "*we would probably only do it as a demonstration.*" Ex. D at 8 (emphasis added).

25. American Tower presented its application for the new cell tower to the Council on October 16, 2012, in the form of Resolution R-73-12 (as Exhibit E). Appellants allege that American Tower's presentation was misleading and designed to induce the Council to approve the Resolution despite insufficient evidence under the applicable ordinances. American Tower falsely represented to the Council that the Lease expired in 2013.

26. At the public hearing on R-73-12, American Tower also told the Council that it was not required to provide certain mandatory evidence required by the ordinances governing construction of cell towers because, allegedly, American Tower was only "moving" an existing tower (despite the fact that, in reality, it asked for and received a permit under Section 13-70 of the Horry County Code). When the County Council inquired whether the existing tower tenants were on board with the move (likely not wanting to disturb their interests at the existing site), American Tower represented that they were, a fact that is clearly false in light of American Tower's affidavit testimony now that "[o]nce the Horry County Council approved Resolution R-73-12 for the relocation of American Towers' tower, American Towers contacted these three telecommunications carriers" and advised them "of the relocation of the tower." (emphasis added). See Ex. F (American Tower's Opposition to Supersedeas at Groseclose Aff. at ¶ 7)).

27. American Tower's plan succeeded, as the Council approved the Resolution allowing construction of the new tower without the showing and evidence required for a permit under Section 13-70. Relying on American Tower's false representations that the wireless carriers knew about and had agreed to move to the

new tower, the Council also mandated that, within 120 days of completing the new tower, American Tower destroy the existing tower on Ms. Johnson's property.

28. Thus, the case on appeal is simple: TriStar made a business investment that benefitted the local landowner by a factor of at least three based on a plain reading of the county ordinances, which should have restricted what American Towers could lawfully do. Based on misrepresentations to the County Council, American Towers made a showing that expressly did not include the required evidence under the ordinances. There is no controversy about this: under American Tower's own application, it declines to present the required evidence. *See* Ex. E. The Council abused its discretion by failing to require American Tower to make the required showing, and by allowing American Tower to take an action that is prohibited by the ordinances. TriStar was deprived of its due process rights to contest the evidence set forth under the required showing, and TriStar was deprived of its due process rights to rely on county ordinances as written when making sound business decisions that benefit local landowners.

29. On Thursday, May 30, 2013, in an attempt to make Appellants' appeal moot before it begins, American Tower obtained a building permit to put up the new tower. Appellants expect American Tower to construct the new tower within days and immediately tear down the existing, fully-functioning tower on Ms. Johnson's property once construction of the new tower is complete.

30. There is a reason American Tower is in such a hurry to negate this appeal before it is heard. That is why supersedeas is appropriate.

GOVERNING LAW

31. Where (as here) a judgment denies injunctive relief, the judgment is not automatically stayed or suspended pending appeal. Rule 241(b)(8), SCACR. To suspend the judgment pending appeal, the Appellant must move for supersedeas—first in the Circuit Court, and then in the Court of Appeals (if the Circuit Court does not grant supersedeas). Rule 241(c)(1), (d)(1)-(2), SCACR. “The purpose of a supersedeas is to stay proceedings in the trial court, to preserve the status quo pending the determination of the appeal, and to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him.” *Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (Ct. App. 1990) (quoting 4A C.J.S. Appeal & Error § 662 at 49495 (1957)) (internal quotation marks and alterations omitted); *see also Schwartz v. Schwartz*, 311 S.C. 303, 304, 428 S.E.2d 748, 749 (Ct. App. 1993) (“The South Carolina Supreme Court issued a writ of supersedeas to maintain the status quo pending appeal.”). If a court grants supersedeas, the judgment is suspended until the appeal is complete. Rule 241(c)(4), SCACR.

32. The standard for granting supersedeas is set forth in the Rule 241, SCACR: “In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether *such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.*” Rule 241(c)(2), SCACR (emphasis added).

GROUND FOR SUPERSEDEAS

33. If this Court does not grant supersedeas, Appellants' appeal will "becom[e] moot." *Id.* Because the Court's judgment is one denying injunctive relief, it is not subject to any automatic stay. Rule 241(b)(8), SCACR.

34. If American Tower is allowed to continue building the new tower and tear down the existing tower pursuant to the very County Council resolution that is being appealed, all before the appeal is decided, *Appellants' appellate rights will be obliterated.* The wireless companies using the existing tower will be forced to migrate to the new tower, and TriStar will lose out on the benefit of the Easement it negotiated with Ms. Johnson in the free market. This will compromise TriStar's relationships, goodwill, and reputation with the carrier tenants on the existing tower. It will also deprive Ms. Johnson of the long-term rent and revenue share payments for the tower site on her property. These are *precisely* the harms Appellants seek to prevent in this lawsuit and on appeal.

35. In other words, once American Tower installs the new cell tower and removes the existing one from Ms. Johnson's property, the damage is done. *This process is already starting; American Tower received its building permit for the new tower on Friday, May 31, 2013 – in the face of a supersedeas hearing.* Even if the Court of Appeals later determines that the Council abused its discretion and that its Resolution to grant a permit under Section 13-70 did not comply with its own ordinances, that victory will be a hollow one for Appellants. This result would compromise Appellants' due process rights to appellate review.

36. A stay pending appeal causes no harm to American Tower because its interests are protected for years to come. Its Lease to continue operating the existing

tower extends until 2030. American Tower attempted to make much at the May 31, 2013 hearing out of the fact that TriStar has waived its claim that American Tower's lease was only good through 2015. But this is an attempt to manufacture controversy where none exists. TriStar originally took that position because American Tower failed to record its own lease renewal, allowing TriStar to negotiate with Ms. Johnson in good faith without notice of American Tower's lease extension. Thus TriStar had an ancillary argument that it was a bona fide purchaser. But when the Honorable Judge Culbertson dissolved the T.R.O. of another County Court Judge, exposing TriStar to immediate, irreparable harm, TriStar waived the 2015 claim to simplify its argument for a stay pending appeal: nothing is more important to TriStar than preserving its right to appeal a decision it believes was clear error, *without the appeal becoming moot*. And so it waived – unequivocally and irrevocably – its secondary argument about whether the lease expires in 2015 or 2030. American Tower cannot support its nonsensical claim that the status quo means urgently tearing down a tower it was happy and determined to use through 2030.

37. The only colorable harms American Tower could suffer from a stay pending appeal are (1) the cost of preserving its right to lease both properties (the existing tower site and the new tower site) until the appeal is decided and (2) the costs of storing steel and other equipment during the appeal. TriStar has already offered to post a bond to cover both of these costs. American Tower itself proposed a bond of \$25,000 to allow it (implausibly and impossibly) to destroy the tower immediately, move the carriers, then destroy the new tower and rebuild the old tower and re-locate the carriers, should they lose. While that plan is absurd and turns the phrase

status quo on its head, American Tower thus concedes a bond setting of \$25,000 is reasonable, which TriStar could and would post for a proper supersedeas preserving the tower pending appeal.

38. The other “harms” American Tower asserts—harm to American Tower’s relationships with the carriers if it does not meet their purported expectation “that they will promptly need to relocate their equipment due to relocation of the tower” and American Tower’s “costs for materials and due diligence to build the relocated tower”—do not pass the smell test. *See* Ex. F at Groseclose Aff. ¶¶ 10-14. American Tower has never introduced any actual evidence that the carriers *need* to move to the new tower site. Instead, only a few years ago, American Tower paid to *extend* its rights to the existing tower site *until 2030*. American Tower’s argument that the carriers will somehow be disappointed when they learn that they do not now “need to relocate their equipment,” as American Tower puts it, is both unsupported and unbelievable. The “evidence” American Tower introduced was rank hearsay: self-serving affidavits from American Tower employees describing their impression of what carriers allegedly think and feel. And American Tower’s similarly unsupported claims that the new site will be “better for [the carriers’] network[s]” should carry no weight. *See* Ex. F (Opp. at p. 2 and Groseclose Aff. at ¶ 13). American Tower’s expenditures for relocating the tower have no connection with a stay pending appeal because American Tower has not explained why the expenditures needed to or need to be made now or why they will not produce the same benefits to American Tower when and if it succeeds on appeal.

39. The purpose of supersedeas is to “preserve the status quo pending determination of the appeal.” *Graham*, 301 S.C. at 130, 390 S.E.2d at 470. Preservation of the status quo is precisely what Appellants seek here. If this Court grants the writ of supersedeas, American Tower will simply continue operating the existing tower on Ms. Johnson’s property—as it is currently doing—through expiration of the Lease. American Tower will also continue receiving rent payments from the wireless carriers. Further, the existing tower will continue to serve the wireless carriers who currently enjoy a right to quiet enjoyment in the tower under their lease with American Tower. *See Diminich v. 2001 Enterprises, Inc.*, 292 S.C. 141, 144, 355 S.E.2d 275, 277 (Ct. App. 1987) (citing Friedman on Leases § 29.201 (2d ed. 1983)) (“It is virtually universally . . . held that a lease implies a covenant of quiet enjoyment.”).

40. Granting a writ of supersedeas in this case would be consistent with South Carolina case law. Courts here have consistently held that, where enforcement of an executable judgment would result in a change to the parties’ status quo before the appeal is complete, supersedeas is appropriate. *See, e.g., S.C. Dep’t of Revenue v. Sandalwood Social Club*, 399 S.C. 267, 276-7, 731 S.E.2d 330, 335 (Ct. App. 2012) (referencing the Court of Appeals’ decision to grant supersedeas, thereby staying the lower court’s decision to suspend appellant’s on-premises beer-and-wine permit); *Berry v. Ianuario*, 281 S.C. 21, 21 314 S.E.2d 308, 308 (1983) (granting supersedeas in a family-law dispute “to prevent the appeal from becoming moot” where the lower court’s order was not subject to an automatic

stay and, if executed, would have changed the familial relationships at issue on appeal).

41. The same is true here. If American Tower is allowed to act on this Court's judgment, the parties' status quo will shift drastically. American Tower will tear down the tower on Ms. Johnson's property and will build a new tower on a different landowner's property across the street. The wireless carriers currently using the existing tower will be forced to migrate to the new tower. This will cause precisely the harms that Appellants are seeking to prevent on appeal, and Appellants' appeal thus will "becom[e] moot." Rule 241(c)(2), SCACR.

CONCLUSION

42. For the reasons above, Appellants respectfully request that the Court grant a writ of supersedeas and suspend for the pendency of appeal the matters decided in the Court's judgment of May 21, 2013 and in any orders, rulings, or decrees leading up to or forming the basis of that judgment that are in any way adverse to Appellants.

{Signature Page Follows}

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Columbia, South Carolina

June 3, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
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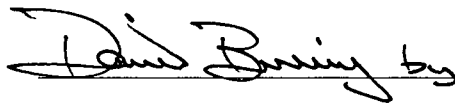
TriStar Investors, Inc., Minerva Realty, LLC, and
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v.

The Horry County Council and American Towers,
LLC, Respondents.

Verification

On behalf of Plaintiffs, I, David C. Bruening, hereby verify the contents of the
Motion pursuant to Rule 241(d)(3), SCACR.

 by *Michael Anzelino*
with permission
see attached
DAVID C. BRUENING
TriStar Investors, Inc., Assistant
General Counsel

RECEIVED

JUN 03 2013

SC Court of Appeals

Michael Anzelmo

From: David C. Bruening <DBruening@tristarinvestors.com>
Sent: Monday, June 03, 2013 8:35 AM
To: Michael Anzelmo
Subject: Re: Draft - Supersedeas Motion Revised for Appellate Court

RECEIVED

JUN 03 2013

SC Court of Appeals

Michael

I have read the Supersedeas Motion. I hereby verify the statements therein. I authorize you to sign and file same.

Thank you
Dave

Sent from my iPhone

Nelson Mullins

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EXHIBIT
Notice of Appeal
with Order

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JUN 03 2013

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SC Court of Appeals

May 22, 2013

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1015 Sumter Street - 5th Floor
Columbia, SC 29201

RE: TriStar Investors, Inc., Minerva Realty, LLC, and Angeline Johnson v. The
Horry County Council, and American Tower Corporation
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Our File No. 39776/01501

Dear Ms. Kitchings:

Enclosed please find an original and one copy of a Notice of Appeal in the above-referenced matter. Please file the original and return a clocked-in copy to me via our courier. Should you have any questions, please do not hesitate to contact me.

By copy of this letter, I am hereby serving opposing counsel.

Very truly yours,



Michael J. Anzelmo

MJA:jlee
Enclosures

cc: Emma Ruth Brittain, Esquire
David C. Slough, Esquire
Thomas C. Brittain, Esquire
A. Preston Brittain, Esquire
Jonathan L. Yates, Esquire

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MAY 22 2013

SC Court of Appeals

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The Horry County Council and American Towers,
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NOTICE OF APPEAL

Pursuant to Rule 203 of the South Carolina Appellate Court Rules, Appellants TriStar Investors, Inc., Minerva Realty, LLC, and Angeline Johnson (“Appellants”) appeal the order of the Honorable Benjamin H. Culbertson entering final judgment against Appellants filed on May 21, 2013. Appellants received notice of the signed order on May 22, 2013. Appellants have attached a copy of the order on appeal to this Notice of Appeal.

{Signature Page Follows}


RECEIVED

MAY 22 2013

COURT OF APPEALS

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____


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Attorneys for TriStar Investors, Inc., Minerva Realty,
LLC, and Angeline Johnson

Columbia, South Carolina

May 22, 2013

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 AM 2:30
MELANIE HARRIS-WARD
CLERK OF 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
MAC

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

2/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.

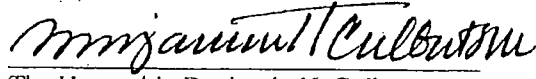
5. Defendants and their subsidiaries, sister or parent companies, affiliates, and agents may issue or accept any building permit or other administrative or regulatory permit or application related to Horry County Council Resolution No. R-73-12 or the new tower.

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 8th day of May, 2013

FILED
5-2-13 to all
parties not in default
FOW

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2012-CP-26-8652

Tristar Investors, Inc., Minerva Realty, LLC and Appellant,
Angeline Johnson,

v.

The Horry County Council and American Towers, Respondent.
LLC,

PROOF OF SERVICE

I, the undersigned Paralegal of the law offices of Nelson Mullins Riley & Scarborough
LLP, attorneys for Tristar Investors, Inc., Minerva Realty, LLC and Angeline Johnson,
do hereby certify that I have served all counsel in this action with a copy of the
pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail,
postage prepaid, to the following address(es):

Pleadings: Notice of Appeal

Counsel Served:

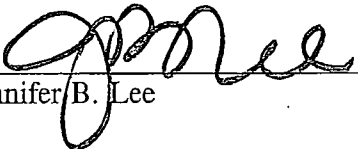
Emma Ruth Brittain, Esquire
Thomas & Brittain, P.A.
P.O. Box 1290
Myrtle Beach, SC 29578
Attorney for Respondent The Horry County Council

RECEIVED
MAY 22 2013
SC Court of Appeals

David C. Slough, Esquire
Nexsen Pruet, LLC
1101 Johnson Avenue, Suite 300
Myrtle Beach, SC 29577
Attorneys for Respondent American Tower, LLC

Thomas C. Brittain, Esquire
A. Preston Brittain, Esquire
The Brittain Law Firm, P.A.
4614 Oleander Drive
Myrtle Beach, SC 29577
Attorneys for Respondent American Tower, LLC

Jonathan L. Yates, Esquire
Hellman Yates & Tisdale, PA
145 King Street, Suite 102
Charleston, SC 29401
Attorneys for Respondent American Tower, LLC



Jennifer B. Lee

May 22, 2013

HORRY COUNTY CODE ENFORCEMENT DIVISION
1301 2ND AVENUE, SUITE 1D09
CONWAY, SOUTH CAROLINA 29526
(843) 915-5090 / 205-5090 / 756-2121/ IVR #
FAX#: (843) 915-6090

OFFICE HOURS

8 a.m. UNTIL 5 p.m. / Monday - Friday (Closed Holidays)

CALLING FOR AN INSPECTION:

- 1 Name on the permit and the permit number must be given.
- 2 Good driving directions.
- 3 Owner or contractor must do all calling. DO NOT let your subcontractors call for inspections.
- 4 Coordinate all inspections, especially in subdivisions where a contractor has more than one house under construction.
- 5 Call as soon as you are ready for an inspection. Inspections called in before 4:30 will be performed the next working day.

STAGES IN WHICH TO CALL:

- 1 Before you pour **any** concrete, call for an inspection. At this time you **must** have your property line marked and a line from the foundation to the property line, showing your **SETBACKS**.
- 2 After setting your temporary service.
- 3 Post foundation, if required (prior to any construction).
- 4 Rough in: Framing, electrical, plumbing, heating and air must be roughed in (We check them all at one time when possible), before insulation. Commercial & multifamily buildings must have fire inspections at this time.
- 5 After insulating.
- 6 Final: At this time a power sticker is issued, if everything is to code. You must have a sewer sticker or a final septic permit. Building must be complete and ready to move in, except power. In most subdivisions, you must have your driveways complete. Commercial and multifamily buildings must have final fire inspection and planning and zoning approvals (certificates) before call for a CO. They must also have their parking and landscaping complete.
- 7 Certificate of Occupancy: **Issued only on new construction!** After the power is turned on and **everything** has been completed, then make sure everything works and is safe.
- 8 If you have any questions, please call the office. If an inspector is not in, we will be glad to have one call as soon as possible.
- 9 When we make an inspection, we sign the permit card, leave a ticket, and if a power sticker is required, we leave it on the meter hub.

THIS PERMIT ALONG WITH AN APPROVED SET OF PLANS AND YOUR SUBCONTRACTORS ROSTER CARD MUST BE DISPLAYED AT THE ADDRESS ON THE PERMIT DURING THE ENTIRE PERIOD OF CONSTRUCTION.

THE PERMIT IS GOOD FOR AS LONG AS YOU ARE WORKING. JUST SO YOU DO NOT STOP FOR A PERIOD OF SIX MONTHS (YOU MUST HAVE AN INSPECTION WITHIN EVERY SIX MONTHS FOR THE PERMIT TO STAY VALID). IT MAY BE REVOKED OR SUSPENDED FOR ANY CODE OR ZONING VIOLATIONS OF ANY REGULATIONS IN EFFECT BY ORDINANCE OR OTHERWISE.

BUILDING PERMITS ARE NONREFUNDABLE OR TRANSFERABLE.

This Certificate is subject to cancellation if any misrepresentations have been made or if any changes are made which violate any zoning ordinance provisions.

**HORRY COUNTY
CODE ENFORCEMENT
ROSTER CARD**

OWNER _____

PERMIT #

29315

TRADE	CONTRACTOR	SC STATE LICENSE	COUNTY BUSINESS LICENSE	PHONE #	INSPECTOR
PLUMBER					
ELECTRICIAN					
HEATING & AC					
SIDING					
INSULATION					
ROOFER					
FLOORING					
MASON					
DRY WALL					
CARPENTER					
WALLPAPER					
PAINTER					
MOBILE HOME SETUP					
POOL					
SIGN					
FIRE SPRINKLER					
FIRE ALARM					
LANDSCAPING					
HOME MOVER					
PILE DRIVING					
DOCK/SEA WALL					
INTERIOR RENOVATION					
FOUNDATION/SLAB					
PEST CONTROL					
INTERIOR TRIM					
HOMEBUILDER					
GENERAL CONTRACTOR					
MECHANICAL CONTRACTOR					
OTHER					

SIGNATURE

DATE

PRINTED NAME

PHONE NUMBER

ALPA

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-26-8652

Tristar Investors, Inc., et al.
PLAINTIFF(S)

The Horry County Council, et al.
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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

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

Plaintiffs' Motion for Supersedeas is DENIED.

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

May 31, 2013
Date

For Clerk of Court Office Use Only

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

Susan P. MacDonald

L. Morgan Martin

ATTORNEY(S) FOR THE PLAINTIFF(S)

Emma Ruth Brittain

Thomas C. Brittain

Jonathan Yates

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Henry Young

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

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

The plaintiff seeks an Order of Supersedeas staying enforcement of this court's order affirming the decision of the Horry County Council allowing the defendant American Tower Corporation to move a telecommunications tower. The telecommunications tower is owned by the defendant American Tower Corporation. The plaintiff Angeline Johnson is the owner of the property on which the telecommunications tower is located. The plaintiff Tristar Investors, Inc. owns a perpetual easement to the property.

The plaintiffs' rights as property owner and easement owner will be unaffected pending the appeal of this case, regardless of whether their motion for supersedeas is granted or denied. They seek an order of supersedeas to stay the removal of the telecommunications tower pending the appeal of this case in order to protect Tristar Investors, Inc.'s investment for the "anticipated" future use of the subject property.

Instrument#: 2010000089884, DEED BK: 3478 PG: 2953 DOCTYPE: 010 09/02/2010 at
08:10:18 AM, 2 OF 6 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

Prepared by and Return to:
American Tower
10 Presidential Way
Woburn, MA 01801
Attn: Land Management/Rachel Carlino, Esq.
ATC Site #85552
ATC Site Name: Finklea SC

MEMORANDUM OF LEASE

This MEMORANDUM OF LEASE ("*Memorandum*") is entered into on the 10th day of March, 2008 by and between Angeline D. Johnson (hereinafter referred to as "*Lessor*"), and American Tower, LP, a Delaware limited partnership (hereinafter referred to as "*Lessee*").

NOTICE is hereby given of the following described Agreement as amended, for the purpose of recording and giving notice of the existence of said Agreement. To the extent that notice of such Agreement has previously been recorded, then this Memorandum shall constitute a restatement and amendment of any such prior recorded notices.

1. **Lease:** Land Lease Agreement, between Lessor, or its predecessor in interest, and Lessee, or its predecessor in interest, entered into on January 14, 1995, as amended (the "*Agreement*")
2. **Extended Terms:** Lessee has the option to further extend the term of the Agreement for each of three (3) successive five (5) year terms.
3. **Final Expiration Date, if all Extended Terms are exercised:** January 13, 2030;
4. **Leased Premises:** As described in Exhibit "A," attached hereto, together with any access and utility easements. Exhibit A may be replaced by an as-built survey at Lessee's option depicting the Premises, access and utilities easements and if applicable, guy wire and guy anchor easements.
5. **Incorporation:** The terms and conditions of the Agreement, as amended, are hereby incorporated into this Memorandum.
6. **Effect:** This Memorandum is not a complete summary of the terms and conditions contained in the Agreement. Provisions in the Memorandum should not be used in interpreting the Agreement

EXHIBIT

C

Defendant 0677

Instrument#: 2010000089884, DEED BK: 3478 PG: 2954 DOCTYPE: 010 09/02/2010 at
08:10:18 AM, 3 OF 6 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

provisions. In the event of a conflict between this Memorandum and the Agreement, the Agreement will control.

[SIGNATURE PAGE FOLLOWS]

Defendant 0678

Instrument#: 2010000089884, DEED BK: 3478 PG: 2955 DOCTYPE: 010 09/02/2010 at 08:10:18 AM, 4 OF 6 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

IN WITNESS WHEREOF, Lessor and Lessee have each executed this Memorandum as of the day first above written.

LESSOR:
Angeline D. Johnson

WITNESSES:

Angeline D. Johnson
By: Angeline D. Johnson
Its:

Jill A. Adams
Signature
Print Name: Jill A. Adams

ACKNOWLEDGMENT

State of
County of Horry

On 2/19/08, before me, Wanda B. Lewis

personally appeared Angeline D. Johnson, who provide to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature Wanda B. Lewis (Seal)
Print Name: Wanda B. Lewis
My commission expires: 7/26/14

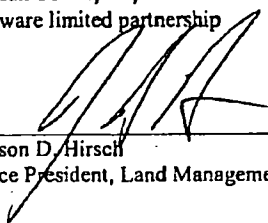


Defendant 0679


Instrument#: 2010000089884, DEED BK: 3478 PG: 2956 DOCTYPE: 010 09/02/2010 at 08:10:18 AM, 5 OF 6 BALLERY V. SKIPPER, Horry County, SC REGISTRAR OF DEEDS

LESSEE:

American Tower, LP,
a Delaware limited partnership


By: Jason D. Hirsch
Its: Vice President, Land Management

WITNESSES:


Signature
Print Name: Nick + Styblo

LESSEE

ACKNOWLEDGMENT

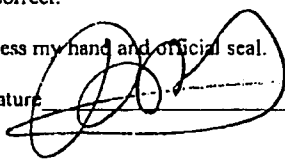
State of Massachusetts
County of Middlesex

On 3/10/08, before me, Dane P. Hutchison

personally appeared Jason D. Hirsch, who provide to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature  (Seal)



Defendant 0680

Instrument#: 2010000089884, DEED BK: 3478 PG: 2957 DOCTYPE: 010 09/02/2010 at
08:10:18 AM, 6 OF 6 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

EXHIBIT A

**This Exhibit A May be Replaced by an As-Built Survey at Lessee's Option depicting the Premises,
Access and Utilities Easements**

LEASED PREMISES

10,000 square feet including but not limited to the following:

All and singular, that certain piece, parcel or lot of land situate in Green Sea Township, County of Horry, and State of South Carolina containing 6.77 acres, and more particularly described as follows:

Beginning at a stake on the South side of S. C. Highway #9, at S. C. Highway #722, thence running S W 481.65' to a stake, thence running N W 446.44' to a stake, thence N E 644.18' to a stake, thence running S E 603.38' to the beginning corner.

This being a portion of the 138.9 acre tract of land conveyed to Louise D. Strickland by Archie E. Johnson by deed conveying an undivided one-half (½) interest by deed dated November 13, 1972 and recorded in Deed Book 480 at page 544 in the records for Horry County. An undivided one-half (½) interest was conveyed to Louise D. Strickland by Archie E. Johnson by deed dated January 2, 1984 and recorded in Deed Book 843 at page 299 in the records for Horry County.

This is a portion of the 138.9 acre tract of land conveyed to Archie E. Johnson by Ben Leigh Hickman by deed dated October 20, 1972 and recorded in Deed Book 479 at page 369 in the records for Horry County.

ACCESS AND UTILITY EASEMENT LEGAL DESCRIPTION

Access runs from the Premises to the public right of way.

THOMSON REUTERS STREETEVENTS

EDITED TRANSCRIPT

AMT - American Tower Corp at Citic Global Property CEO Conference

EVENT DATE/TIME: MARCH 13, 2012 / 1:30PM GMT



CORPORATE PARTICIPANTS

Jim Taiclet *American Tower Corporation - CEO*

CONFERENCE CALL PARTICIPANTS

Michael Bilerman *Citi - Analyst*

Mike Rollins *Citi - Analyst*

PRESENTATION

Michael Bilerman - *Citi - Analyst*

Welcome to the 9.30 session, day two of Citi's Global Property CEO Conference. We're extraordinarily pleased to have with us American Tower. I'm Michael Bilerman and walking beside me is Mike Rollins, our telecom analyst. When you have to look at American Tower, we've got to be able to do it jointly, given the fact they're a REIT, but in a business that REIT investors are not as familiar with. So, Jim, why don't I turn it over to you and -- for some opening comments, and the Mike and Mike will handle the questions.

Jim Taiclet - *American Tower Corporation - CEO*

Thanks, gentlemen. Back in the early 1990s, a media entrepreneur named Steve Dodge rolled up a number of radio stations based on some new, at the time, FCC ruling that he was taking advantage of. Steve's one of the finest entrepreneurs I've ever met and founded three companies along the way. A lot of his running the radio business and before selling it later to CBS, Steve recognized the value of the radio towers that were within the Company. The towers that were being used really for a single purpose, which is to broadcast radio signals for listeners.

Steve recognized that there was some pretty valuable real estate there and he was also looking ahead to the next change that the FCC was going to be undertaking, and that was to expand the number of cellular licensees in the mid-1990s from only two per region to upwards of six or seven per region through something called the PCS option. And that was a spectrum, which for the first time auctioned in the United States to bidders who would then build out wireless networks.

So Steve in advance of this used the radio business to create a subsidiary within it to buy and build towers really for the purpose of this upcoming wireless mobile communications kind of revolution.

So then when American Radio sold to CBS in 1998, what they did was retain the towers, created a new entity called American Tower out of American Radio, spun it out an IPO in 1998 and at the time, the organization had 13,000 sites and IPOs for about \$20 a share.

From its inception inside American Radio, American Tower has always been a real estate company. It's made up of permanent structures on owned or leased land. The tower itself and the ground space beneath it are then leased to tenants such as AT&T or Verizon or MTN in Africa, or (inaudible) in India. For long-term, usually 10-year initial terms and 5-year renewals with annual escalators all along the way. Characteristically and very familiar to everybody in this room.

So, while American Tower has been a real estate Company all along, we just formally adopted the REIT organizational structure for the corporation on January 1st, 2012. We had a tax shield that was provided by legacy NOLs from the original Company. They're now winding down, there's about \$1 billion left on those today. That was one of the motivations of the timing frankly. And as a REIT, what we plan to do is perpetuate our existing tax efficiency. We are introducing a recurring dividend and we're going to continue to grow the business along the way.

In addition to the real estate characteristics of American Tower's business, I think the most exciting aspect of what we do and what we're involved in is the growth prospects that are driven by mobile technology. I mean how many people have just switched let's say in the last year from a Blackberry to an iPhone or an Android? Anybody in the room make the switch by a lot of your family members?



Well, back when you had the Blackberry, your average network utilization, excuse the terminology for just a second, is 120 megabits a month. That's kind of what you use with a device like that. When you switched to the Android or the iPhone or a similar type of touch screen phone, you end up using about 500 of these megabits a month. See, basically without even probably knowing it, you've multiplied your burden on the network by 4X with that upgrade. There are a lot of people doing things like that.

But what's probably also something you don't really recognize is that most people in America don't have smartphones yet. About two-thirds of them still have basic, what's called feature phones that are just for voicing and texting and not much else. Those people only use 5 megabits a month. So if you could go up the ladder and you think about well, what about when those 5-megabit per month people switch to the basic smartphone and go to 120 megabits and then they go to the touch screen and go to 500 megabits you can imagine what the burden on the networks is going to be and what it has been.

That migration requires your cell phone Company, and all the others frankly, to add equipment, to add new sites, and that increases our lease revenue and that's what's driven our growth over the last few years and it's going to drive our growth over the next few years.

So our Company's mission in that context has been to convert previously single use, carrier owned, phone company owned towers into commercially leased real estate by a professional management company, in our case, American Tower. That's our mission, to take single use, owned assets that were non-performing frankly, and turning them into performing commercial leasing assets. That's our mission.

We pioneered this transition in the US in the late 1990s when we went from American Radio to American Tower. We're the domestic leasing leader in the business in the US today based on revenues and AFFO. Frankly the business in our view is based on plain common sense. It provides multiple benefits, one of which is the least multi-use site is much more economically efficient for carriers, especially when there's more than two. It enables them to pursue large technology deployments. So their CapEx commitment can be used much more efficiently and get service to many more people using the multi-use towers in a lease mode.

The second advantage to our business model that's just, again, it boasts plain common sense, is that by using existing structures that a carrier used to go on and deploy, we can seed that deployment by a factor of 3 or 4 times. So, while it might take six months to build a tower in a favorable zoning environment, it will probably only take you 30 days to 45 days to get on our tower if it's already there. So it speeds the market advantage for our carriers. And then that allows new services to be provided more quickly to consumers and accelerate our ability to provide more people with the kind of handsets that we've talking about. So our international strategy is then to determine other markets that have these favorable characteristics that the US has. And then capitalize on this transition that we can often drive from the single owned tower to the multiple use lease tower.

All of our international markets are in earlier phases of technology deployment. So we think we have a longer runway of growth and a faster growth rate in just about all of these countries that we operate in, which is now nine plus the US. So we expect even higher growth rates for a longer period of time than we are going to get domestically.

So, when you take our nearly 50,000 communication sites in the US and around the world, these generate substantial cash flow based on all the technological influences that we've talked about. Our 2012 AFFO guidance is \$1.17 billion at the midpoint. That's going to enable us to continue a robust capital allocation program. The first call on that's going the required REIT dividend. We're going to then continue our growth CapEx and our acquisition planning and if we have extra cash, as Mike as seen over the years, we'll return that to our shareholders as well.

So to kind of step down the ladder very quickly before we go to the questions from Mike and Mike here, we do plan to pay out 100% of our US taxable income. That's our financial policy. This year we expect that to be \$0.80 to \$0.90 per share. If you roll it all up, that's almost \$400 million distribution this year. That's less than 30% of our AFFO though. So we have upside we think in the dividend over time.

Secondly, our budgeted revenue generating construction projects, so that's building towers and similar systems in existing markets with existing customers. That's going to call about \$500 million in our budget this year. That will include a couple of thousand new sites that we're going to build. And that will leave about \$300 million plus before any additional leverage that we might take on for acquisition and/or potential share repurchase.



That industry cannot operate at all without the real estate that we provide for them and in some cases they may own a piece of it, they'll lease a lot of it from us. If you look at the -- those (inaudible) like AT&T, they've got over 50,000 transmission locations. That is their business. It's getting the signal to you in the places that you are at with sufficient strength so you can use the product.

So I think we're at the very core of one of the most important industries in America and really around the world. And they can't -- they literally can't live without us. Of the four major wireless carriers, they only own about 20% of their locations and they lease about 80%. We're going to try to make that conversion happen again in foreign markets we're entering as well.

So, to me it's mission critical real estate, to our customers it's mission critical real estate. And we just need to as a Company keep pursuing an education process with all of you to get you comfortable with the metrics and how the operation works, and the fact that we think there's very low technology that we [face].

Michael Bilerman - Citi - Analyst

And you talked a little about the four major carriers. Obviously then tenant concentration is quite high for your business. So how do you get comfortable with sort of underwriting the tenant side of it, where they are within their life cycle and help for that?

Jim Talcott - American Tower Corporation - CEO

To just put things in some context, we've got about 2,500 customers total. Now, four of them make up about 50% of the revenue, so your point's well taken. But we're very close to these customers and let me talk to the top one first, and that's AT&T for us.

AT&T, along with Verizon is a mixed wireline-wireless company. Their wireline business has declined. In real terms it's declining. It's going down. Revenues are decreasing over time in the classic phone business. They're increasing in the mobile business and the imperative I think for AT&T and Verizon is to make sure that there's robust growth in wireless that more than makes up for the decline in wireline. This is a strategic imperative I think for both of those companies. They made the decision then to be leaders in mobile in the United States and to invest in what it's going to take to be the in the leading edge of that product or service.

Mike is very familiar with all the numbers, but AT&T and Verizon have each spent about \$20 billion a year total in the last couple of years. Usually it's a little over half on wireless and a little under half on wireline. The whole industry in the United States, which is just all through with Sprint Nextel, which is the number three carrier, T-Mobile USA number four, and some regionals. That industry spends about \$20 billion a year to \$25 billion a year just on mobile CapEx. The tradition and trend has been of that spend they're on average 13,000 to 15,000 new transmission locations deployed each year by this set of companies. And our market share tends to be between 20% and 25% of those locations.

And so we've had a very steady improvement in lease revenue, based on that equation. And I think it's -- again it's sort of imperative for the leaders to keep doing it because of their issues on wireline and if Sprint and T-Mobile and others want to stay in the game, they're going to have to follow up. And so we think it's a pretty sustainable trend for a long time to come, frankly.

Mike Rollins - Citi - Analyst

Jim, one of the differences between maybe your model and some data centers, for example, I look at is occupancy. Can you talk about how investors should think about the occupancy of your site locations? And more broadly, how investors should think about in internal growth relative to capital intensity.



Jim Taiclet - American Tower Corporation - CEO

Occupancy for us is a variable term. Our average capacities per tower is about five tenants. So if you drive down the freeway after you leave this meeting, you'll see these things now on the side of the road and you won't be able to avoid looking at them because you've talking about them hopefully. And you'll see that there will be layers of antennas on these things. Some towers only have one, some have a couple and some have seven or eight.

So the average capacity is five, but our engineers claim to us, and we've actually seen that the tower can be augmented in almost every case to add six, seven, eight, nine if you need to. That's a pretty modest CapEx requirement. It's about \$30,000 to augment a line. So we've got pretty -- we basically don't feel like we're supply or capacity constrained at all, Mike. And then as far as how our growth requires capital, again it doesn't require much. So only one out of every four or five new installations is going to require this upgrade and they pay back within a year. Okay?

So, if our CapEx of about \$550 million is a guidance for 2012, \$75 million of that will be pure maintenance CapEx for us. It's making sure the guy wires are in good shape. It's replacing lighting systems on top of the tower, those kinds of things. And another \$50 million or so will be just redevelopment or upgrade CapEx as we call it. And the rest will be pure growth, new towers, new distributed systems, things like that.

Mike Rollins - Citi - Analyst

Just in terms of the rate of growth, how should investors think about the ability for you to grow internally from the existing set of assets?

Jim Taiclet - American Tower Corporation - CEO

The existing asset base in the US has been growing 7.5% to 8% annually over the last few years and that's the combination of the embedded escalator amendments, when people that already have a contract with us need to add more equipment or ground space and the new leases that come onto the towers that we already have. So that's the 7%-8% is driven by those three things, net of any churn that comes off, which is 1% to 1.5% a year. Okay?

In the international market, that's been higher. It's been sort of 8% to 10% on average over the last few years. And then we've leavened those growth rates with our emerging acquisition program. So last year we actually grew 23%, 8% to 9% of it was organic and then the balance was through M&A.

Michael Bilerman - Citi - Analyst

Jim, you talked a little bit about owned and leased. So you lease some of your land.

Jim Taiclet - American Tower Corporation - CEO

Um-hmm.

Michael Bilerman - Citi - Analyst

And just what's sort of the term of those contracts and how you sort of value a tower versus no tower.

Jim Taiclet - American Tower Corporation - CEO

Well, we've got 28% land ownership in the US and we have an ongoing program that budgets to buy about 3% of that land more per year. So that's the starting point.



The balance of the sites that are leased, the average term is over 20 years right now remaining. And for each year over the next few years of less than 1% of the sites that are going to come up for renewal. So we think it's a manageable issue and we pre-negotiate three to four years ahead of time before any lease comes up for renewal. We have a very successful track record of renewing those. So, we feel pretty comfortable about (A) our ability to buy land, but we want and (B) to extend if that's the preference of the owner.

Michael Bilerman - Citi - Analyst

How much -- you said how much is leased land? Is that the total?

Jim Taiclet - American Tower Corporation - CEO

Of this --

Michael Bilerman - Citi - Analyst

How much of your revenues is driven off of leased land?

Jim Taiclet - American Tower Corporation - CEO

That would be about 60% of revenues -- or 70% of revenues, all -- including international would be driven off the leased land. 70%.

Michael Bilerman - Citi - Analyst

And then your -- the average duration right now is 20. Do you have a right of renewal that takes that 20 up to 30 as a right? Or does that all go to market at then end of each lease?

Jim Taiclet - American Tower Corporation - CEO

If the final term -- (inaudible) the term it could go to market. But we do everything we can to pre-negotiate before we get to that point.

The leverage on our side is that we can move the tower nearby and go onto other leased land because we own the customer contract and we would work for the customer and do that. We really haven't had to because people that see a \$1,000 a month or a \$600 a month ground lease for 500 square feet of land going to zero and seeing their neighbor get it usually helps to get them (technical difficulty).

Michael Bilerman - Citi - Analyst

So these things can actually be lifted off the ground?

Jim Taiclet - American Tower Corporation - CEO

Well, you construct a new one and then you move the equipment off the old one.

Michael Bilerman - Citi - Analyst

And the cost of doing that?



Jim Taiclet - American Tower Corporation - CEO

That would be a couple of hundred thousand dollars and we don't -- haven't done it, and we would probably only do it as a demonstration, not a (inaudible) it to. But again, for a landlord to -- in the context of what we do, the vast, vast majority of our landlords are single landlords. In other words, they own one plot that we have attached. And the government is our biggest land -- US government is our biggest landlord. They have about 5% and those are renewable long-term contracts with the forest service and other agencies.

Michael Bilerman - Citi - Analyst

There's not an element of simple ground lessors, the business on top of the ground is highly profitable and you talked about how much it's growing, and there's data usage. It's almost like, wow, that's the thing I can really jam them. But you're saying that the cost of -- your cost of moving and your cost of opportunity is -- you won't be able to be able to get jammed.

Jim Taiclet - American Tower Corporation - CEO

Well, it's a significant opportunity -- it certainly would cost us to move. It's a zero value proposition for the landowner if we do it. We'll negotiate and typically our renegotiations can result in an increase in the ground rent, but that's manageable. So just to give you a context, we have about 3% embedded escalator in the ground lease versus 3.5% in the contract in the US for the customers. Our leasing cost goes up by about 5% a year because either we're getting more ground space on certain sites or adding and/or we're renegotiating. So there are some up ticks in ground leases, but again they're manageable in the context of the portfolio, very little of it comes up for renewal in any given year. And we're just managing it as we go.

Michael Bilerman - Citi - Analyst

Are there questions from the audience?

Unidentified Audience Member

Does this conversion from 2G to 3G to 4G, how does that affect you?

Jim Taiclet - American Tower Corporation - CEO

It drives our leasing revenues up and it does that in two ways. One is the phase 1 deployment, as the carriers would call it, is very commonsensical. They're going to take some of the sites they have in existence and they're going to add equipment and antennas just due to that technology. For us, that's what I described as an amendment. So, a typical amendment would be -- again this is typical -- so a \$2,000 base rent per month would go to, say \$2,400 a month because the carrier is going to have to put three new antennas and three new lines on the tower. So that's an amendment.

Over a couple of year period of time they're doing this now about LTE from AT&T and Verizon, and now Sprint and T-Mobile. They will be touching probably two-thirds of their towers in the next -- or their cell sites in the next two years. There'll be some amendment revenue that comes with that and as people then buy their phones and the other devices, they're going to have a lot more capacity requirements. So a year and a half into these deployments typically they'll start having this what's called split cells, meaning I've got so much traffic on this site that I need to go get another site nearby, install equipment, and that's a new lease for us.

So phase 2, to simplify things really is a generally new lease. It's making the cell side array more dense so that the capacity and the signal strength that's required for lots of people can then be put out there. That's just a historical pattern, kind of a lease broad pattern.



Unidentified Audience Member

(Inaudible question -- microphone inaccessible)

Jim Taiclet - American Tower Corporation - CEO

We use a cash-on-cash, so unlevered internal rate of return hurdle. Okay? So for the US, that can be between 8% and 12% for an investment. If it's a well-known asset with good growth prospects and strong counterparty leasing it today, that could be a little bit on the low end. If it's a concentrated portfolio for say a regional carrier, it's got a lot of customer concentration, it'll be on the high end of that.

And then as we move out of geography, we will increase that basic hurdle rate. And in places like, say Brazil and India, the hurdle rate's going to be between say 13% and 16%, versus the 10% to 20%, now you're looking a 14% to 15% midpoint. And as you moved a little further a field, to places like Ghana where we haven't operated before, those IRR totals are going to be on the order of 20%.

So we risk adjust it up for geography, and we'll fine-tune that risk adjustment for the counterparty and the quality of the site.

Mike Rollins - Citi - Analyst

Jim, can you just put it in perspective how 2012 from a demand point of view is different than 2011 or 2010?

Jim Taiclet - American Tower Corporation - CEO

So, Mike, in the US we think leasing demand is going to be at or above where we've seen it in those last few years. The biggest driver, and this is the typical telco analyst question, the biggest driver will be AT&T. They've been our biggest customer every quarter since they launched the iPhone. We think that'll continue to be the case.

Second largest customer will be between Verizon and probably Sprint Nextel this year because both of them are moving, again forward with LTE, which is fourth generation technology. And also filling out their networks because all the carriers, including T-Mobile have almost all of their existing handsets on 3G. So the 3G network still has to be developed while 4G is being introduced and that's a full leapfrog kind of context.

So there'll be a lot of money spent by all the carriers on 3G and all of them are either pursuing or introducing a 4G overlay as we call it. So those will be the big drivers in the US, Mike, and I think it'll be again at or above last year.

Overseas, we think this'll be a really interesting year for our Company. We've chosen the countries that we've entered very purposefully. Okay? One selection criteria is that we have common customers among a lot of these countries. So when you look at the five Latin American countries we have, you have Nextel International, Telefonica, America Mobile, Millicom and numerous other countries. We understand what their technology deployments are going to be and we know when they want spectrum. Spectrum plus cash allows you to rollout new technology. And so we know that NII is going to have a significant rollout in Brazil and Mexico this year for 3G actually. They only have 3G at these countries.

Telefonica one spectrum and is rolling out more 3G service in Mexico also. And there's two or three carriers in Brazil that are going to do that over the next 18 months as well. So we have a nice technology driven trend in, say Latin America.

In India, there's -- in 2012 their fiscal year starts April 1st, but the budget for 2012 we understand for the major carriers is going to be more robust than they were in 2011. And that's only primarily doing 2G service. India still has only about 50% or 60% mobile penetration, whereas countries like ours have 100% frankly. So, that will be 2G driven.



And when you look at Sub-Saharan Africa, which I'm very interested and excited about. Again, very early days, 2G to 3G transition, which is going to be pretty important for them. And it's literally just getting started. And to me, the leasing margin conversion in Africa is the closest example we have to what happened in the US, say 12, 14 years ago when the carriers were looking at big CapEx requirements for their rollout, they decided to sell the towers and those towers has essentially one customer on them. And we'll get two or three more hopefully over the next few years in Africa.

So all the markets internationally look pretty strong to us today. But again, these are multi-year programs. It'll take years to roll these networks out. They're big CapEx numbers and in 2012 specifically will be a time I think all the cylinders are actually hitting pretty well, Mike.

Unidentified Audience Member

(Inaudible question -- microphone inaccessible)

Michael Bilerman - Citi - Analyst

Jim, if you can just repeat the question.

Jim Taiclet - American Tower Corporation - CEO

Yes, I think this is a tradeoff with how do we drive growth in new markets and select those to go into in the context of the difficulties of building new towers in some of these markets.

That's basically one of our core topics is analyzing wireless market, figuring out if it's a good place for us to go to. Part of that analysis is how easy or hard is it still with towers in the country? There's actually some balance to that question because the zoning is not necessarily -- typical zoning for new towers is not necessarily a bad thing for us. We have a lot of towers already. Or if we do a deal where somebody has a lot of towers already. But I think the most important issue on maintaining the sort of franchise data for the individual sites is a real issue here. Okay?

The franchise value of individual sites is not mainly driven by how hard the zoning is in that country. It's driven by the economic irrationality of building a site next to mine. Okay? So let me kind of explain that.

There's typically three to six major licensees in any given territory in any given country. Those are your primary customers. And all I can say, we have 2,500 customers, all the way down to the local police force in Western Massachusetts or something. But the big customers, as we talked about, are wireless carriers.

So as a builder of towers, it is an economically irrational decision to build within the effective radius of somebody else's tower. Because let's say I have six licensees in that territory and I've already got a tower with two of them on it, there's four potential ones. Well, I've already -- if I build a tower in that same region, I've only got four possible customers instead of six. My competitor already has two, has natural lease agreements with three of the other ones, and I don't have a very good future return that I'm looking at probably here.

So what prevents people from building next to you because of easy zoning is the economic irrationality of doing that. The tower companies naturally do not build next to each other. So we do view these issues, but that's where this all is.

Michael Bilerman - Citi - Analyst

Jim, I've got three rapid fire before the bell goes. What do you think same store NOI growth will be for the tower sector in 2013?



Jim Taiclet - American Tower Corporation - CEO

We haven't guided to that exact number, so let me just give you a range.

Michael Bilerman - Citi - Analyst

The sector in general.

Jim Taiclet - American Tower Corporation - CEO

Yes, sort of 8% to 10% I think is a reasonable number.

Michael Bilerman - Citi - Analyst

Organic same store, no investments, just pure growth. If you had to --

Jim Taiclet - American Tower Corporation - CEO

When I say the sector, I mean the global sector. That's not necessarily US.

Michael Bilerman - Citi - Analyst

No. If you had to, what property sector, other than your own, would you invest in right now?

Jim Taiclet - American Tower Corporation - CEO

I'd like to say data centers, but I don't know enough about one issue they have and that is the fact that unlike our towers, which have gone the other way, there could be in-sourcing with data centers. That's not, again the case with our industry because if the carriers decided to outsource this more or less permanently, I don't know about that issue in data centers.

Michael Bilerman - Citi - Analyst

What is the best real estate decision to make today, buy, build or sell?

Jim Taiclet - American Tower Corporation - CEO

In our sector it's build.

Michael Bilerman - Citi - Analyst

Great, thank you very much.



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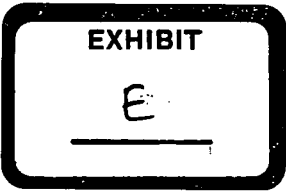


EXHIBIT A

COUNTY OF HORRY)
) RESOLUTION NO. R-73-12
STATE OF SOUTH CAROLINA)

RESOLUTION TO APPROVE THE PERMIT TO LOCATE A 300 FT SELF SUPPORT TELECOMMUNICATIONS TOWER ON TMS# 038-00-01-020 LOCATED ON A .25 ACRE PARCEL OFF W HWY 9 BUSINESS ON HUGGINS RD HORRY COUNTY, SOUTH CAROLINA.

WHEREAS, Section 13-70 of Article VII of the Horry County Code of Ordinances authorizes Horry County Council to permit all new freestanding telecommunications towers in Horry County; and,

WHEREAS, a request has been filed to permit a new 300 ft self support telecommunications tower on a parcel of land identified by TMS #038-00-01-020; and,

WHEREAS, County Council finds that the current Forest Agriculture District (FA) zone allows for such towers to be permitted; and,

WHEREAS, County Council finds that the application adequately satisfies the criteria of review stated in Section 13-73,

NOW THEREFORE, Horry County Council resolves to approve the permit to locate a 300 ft self support telecommunications tower on TMS# 038-00-01-020 located on a .25 acre parcel off W. Hwy 9 on Huggins Rd Horry County, South Carolina.

AND IT IS SO RESOLVED.

Dated this 16th day of October 2012.

HORRY COUNTY COUNCIL

H. Tom Rice, Chairman

Harold G. Worley, District 1

Brent J. Schulz, District 2

Marion D. Foxworth, III, District 3

Gary Loftus, District 4

Paul D. Price, Jr., District 5

Robert P. Grabowski, District 6

James R. Frazier, District 7

Carl H. Schwartzkopf, District 8

W. Paul Prince, District 9

Jody Prince, District 10

Al Allen, District 11

Attest:

Patricia S. Hartley, Clerk to Council

County Council Decision Memorandum
Horry County, South Carolina

Date: October 5, 2012
From: Planning & Zoning
Division: Infrastructure and Regulation
Prepared By: David Schwerd, Principal Planner
Cleared By: Janet Carter, Director of Planning
Regarding: Telecommunication Tower ATC 278053 (Huggins Rd)

ISSUE:

Should County Council approve a telecommunications tower permit for TMS#038-00-01-020?

PROPOSED ACTION:

Approve the telecommunications tower permit with conditions as stated by staff.

RECOMMENDATION:

Staff recommends approval of the telecommunications tower permit based on the applicant meeting the required criteria set forth in Article VII, Section 13-73 of the Horry County General Code of Ordinances relating to the granting of a telecommunications tower permit. Staff also recommends that American Tower remove the existing tower within 120 days of the final on the new tower.

BACKGROUND:

American Tower Communications is applying for a telecommunications tower permit to construct a 300 ft self support tower on a .25 acre parcel located off W. Hwy 9 on Huggins Rd. The applicant states that there are two towers within the 2.5 mile radius and therefore are requesting a waiver. The closest tower is a tower that they currently own. The second tower owned by SBA is located just over 1 mile away. That tower does not currently serve cellular antennas. The American Tower owned tower is located 2520 ft away from the current site. They however have not been able to secure an extension to the lease for the existing tower site.

The tower will provide a minimum of five co-location possibilities for future cellular services. The subject property is surrounded by farm land.

The applicant will be adding the required 36 inch minimum stripe of either reflective tape and/or paint centered on the 150 foot mark of the tower. The telecommunications tower site plan meets all the other requirements of Article XVI of the Horry County Zoning Ordinance, including setbacks and landscaping.

Telecommunications Tower Permit
Review Sheet



PROPERTY INFORMATION			
Applicant	American Tower	Telecom Permit #	12-09-001
Tax Map (TMS) #	036-00-01-020	County Council District #	J. Prince
Site Location	ATC 278053 Located off W. Hwy 9 Bus and on Huggins Road	Staff Recommendation	Approval
Property Owner Contact	Steve Vandran, American Tower	Size (In acres) of Request	.25ac

REVIEW CRITERIA		
Zoning District	Tower Height	Tower Type
Forest Agriculture (FA)	300 ft	Self Support Tower
Proximity of tower to residential structures and zoning district boundaries		
The site is surrounded by FA zoned property. There is a cabin within the fall zone, however the property owner is aware and will sign a waiver.		
Nature of uses on adjacent and nearby properties		
The adjacent uses are mostly farm land and wooded wetlands.		
Surrounding Topography		
This parcel is surrounded by wood land, wetlands and fields.		
Surrounding tree coverage and foliage		
There are no trees between the tower and Huggins Road.		
Design of tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness		
The tower is designed as a 300ft self support tower. The applicant is proposing to landscape the site.		
Proposed Ingress and Egress		
Direct access is a 30ft access easement off Huggins Road..		

NOTICE INFORMATION			
Date Advertised	9/30/12	Date Posted	9/28/12
# of Property Owners Notified	10	Date Notification Mailed	10/1/12
Report Date	10/5/12	Staff Contact	David Schwerd Principal Planner

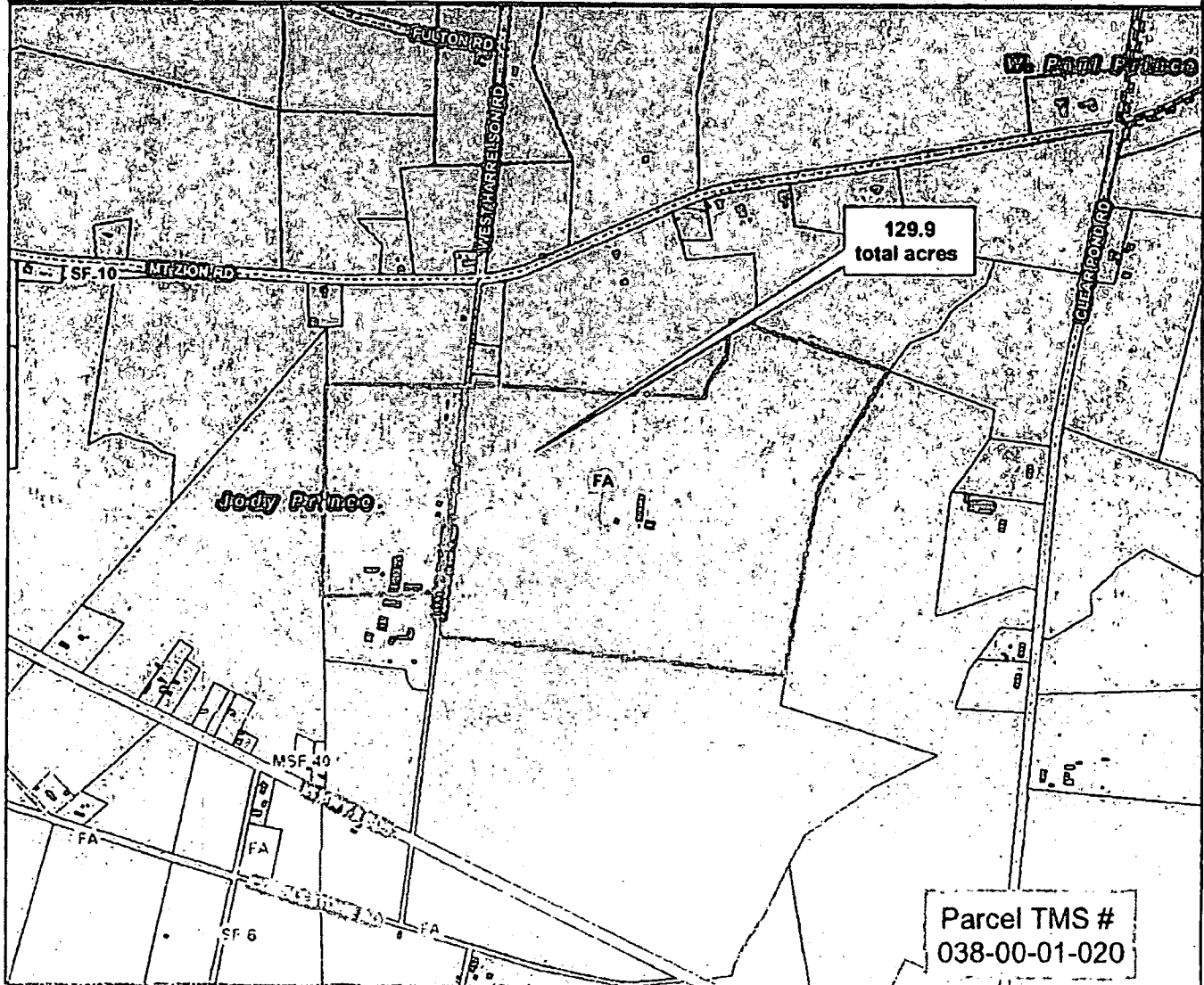
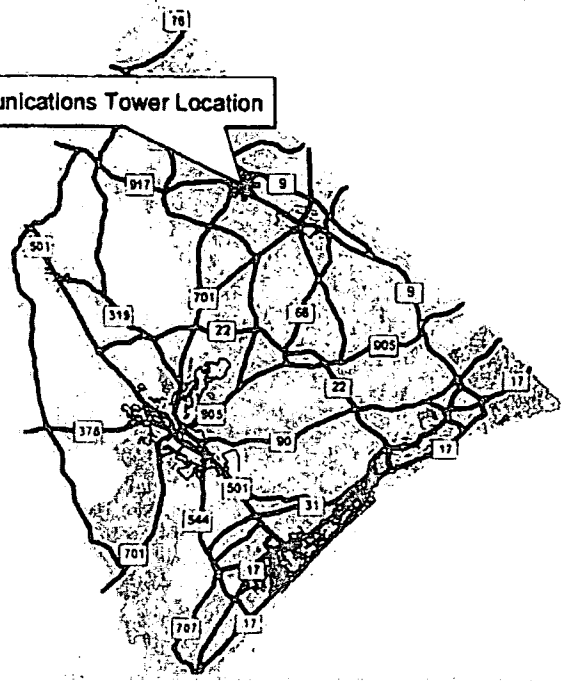
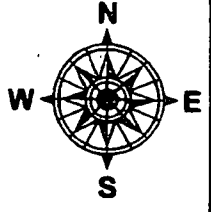
DISTRICTS


- 1
- 2
- 3
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- 5
- 6
- 7
- 8
- 9
- 10
- 11

COUNTY COUNCIL

Telecommunications Tower Location

Traffic Station Location Map






ARCHITECTS
 401 WEST FIRST ST
 SUITE 100
 FAYETTEVILLE, NC 28404
 TEL: 704/336-1100
 FAX: 704/336-1101

BC
architects
 801 GARDNER ST
 FAYETTEVILLE, NC 28404
 TEL: 704/336-1100
 FAX: 704/336-1101

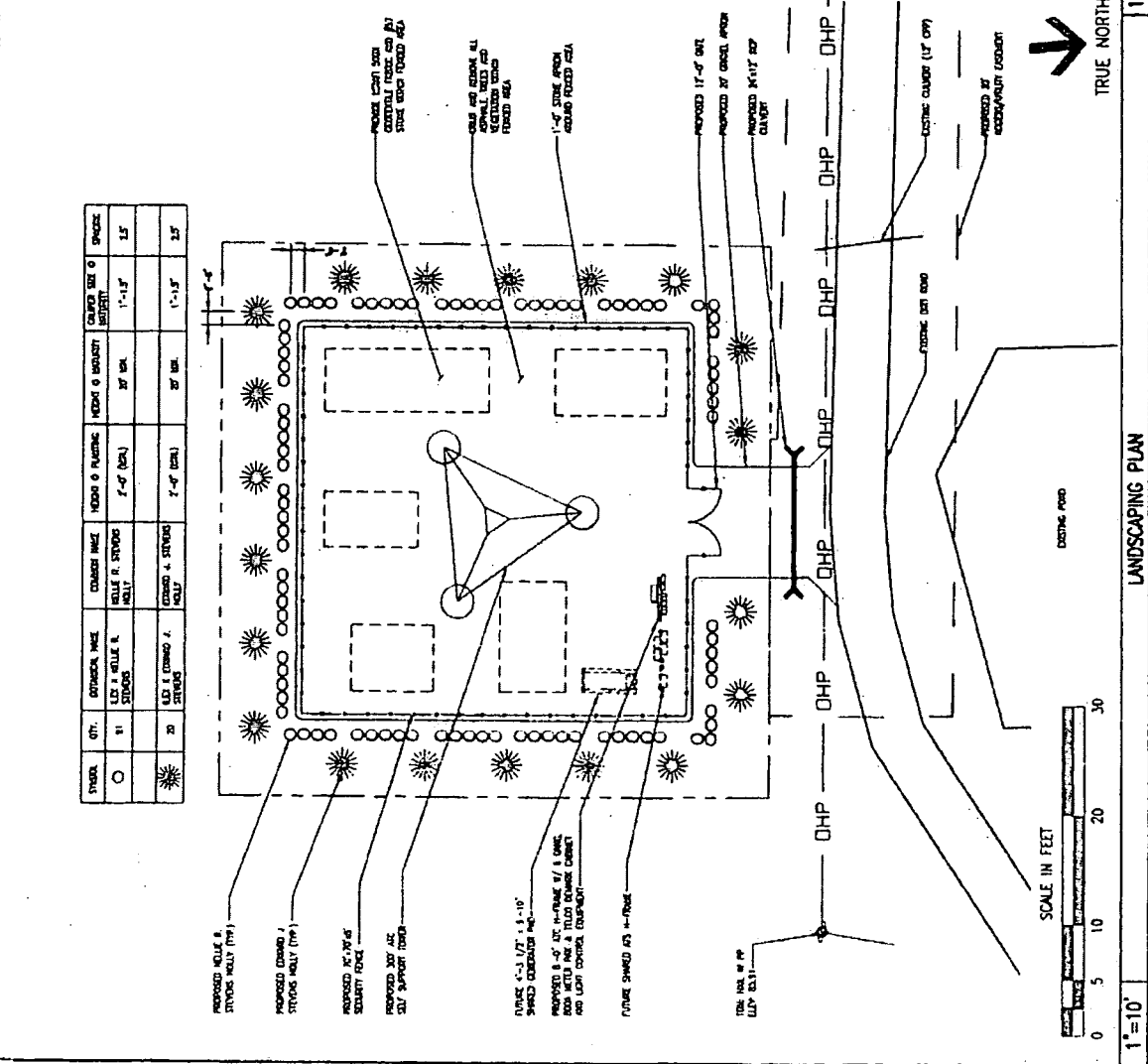
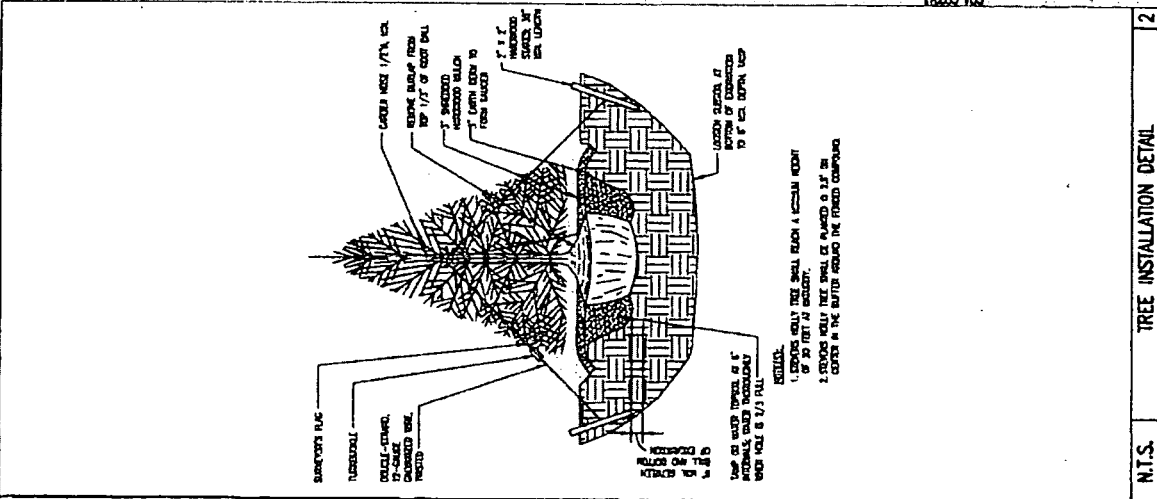
NO. 278053
 SHEET NO. 1
 DATE: 07-24-17

278053
FINKLEA RELO
 2145 WILSON RD
 LENOIR, NC 28645



DATE: 07-24-17
 CHECKED BY: JMK
 DATE: 07-24-17
 DRAWN BY: JMK
 DATE: 07-24-17
 SHEET TITLE: LANDSCAPING PLAN

SHEET NUMBER: L-1
 REV. #

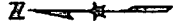


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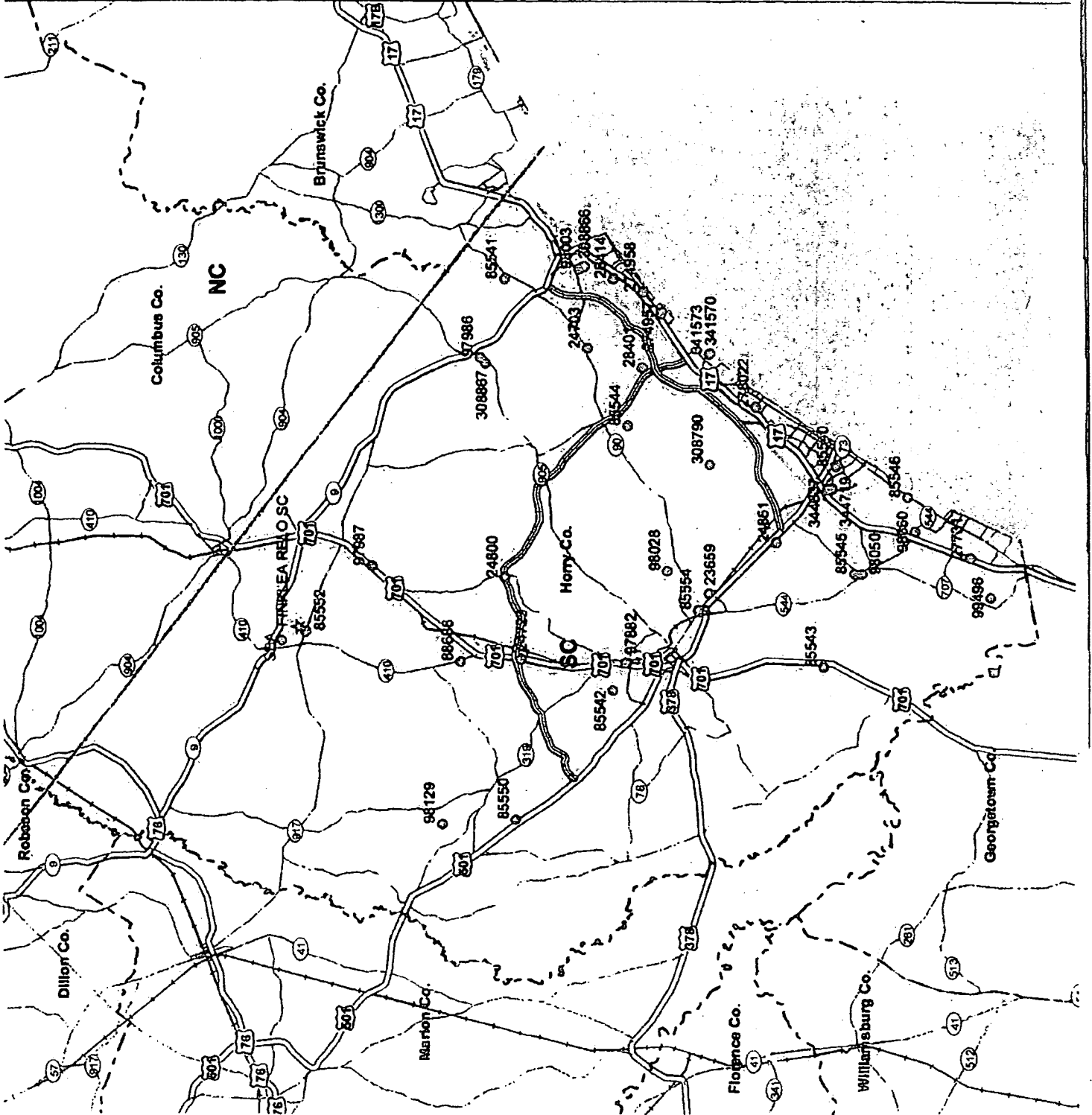
AMERICAN TOWER®

ATC Marketable Assets in Horry County, SC

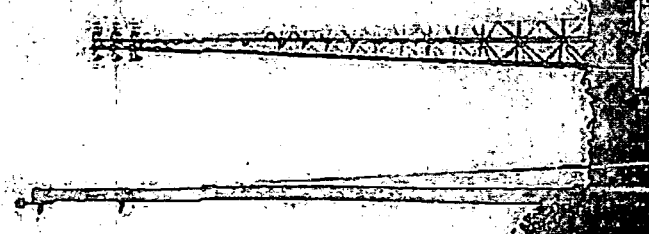
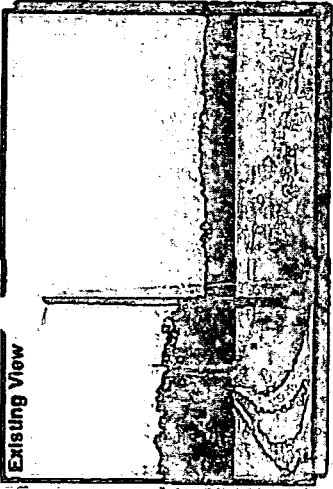


1 in = 7 miles

- ★ FINKLEA RELO SC
- SBA Site
- ATC Marketable Site
- ☐ Horry County, SC



Existing View



Finklea Relo 278053
Loris, South Carolina
300ft. Lattice Tower
Simulation
View from Huggins Road
approx. 1,060ft. west-northwest of site
AMERICAN TOWER
CORPORATION



STATE OF SOUTH CAROLINA
COUNTY OF HORRY

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

Plaintiffs,

v.

THE HORRY COUNTY COUNCIL,
and AMERICAN TOWERS, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C/A No. 2012-CP-26-86852

**DEFENDANT
AMERICAN TOWERS, LLC'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR SUPERSEDEAS**

Defendant American Towers, LLC f/k/a American Towers, Inc. ("American Towers"), through its undersigned counsel THE BRITAIN LAW FIRM, P.A., HELLMAN YATES & TISDALE, and NEXSEN PRUET, LLC, hereby submits its Opposition to the Motion for Supersedeas (the "Motion") filed by TriStar Investors, Inc. ("TriStar"), Minerva Realty, LLC ("Minerva"), and Angeline Johnson ("Johnson" or the "Landlord") (TriStar, Minerva, and the Landlord may be collectively referred to as "Plaintiffs") as follows:

INTRODUCTION

In the face of this Court's full consideration of the merits of this case and the deliberate dissolution of the temporary restraining order, Plaintiffs improperly and without a legal or factual basis seek to perpetuate the temporary restraining order. Plaintiffs are using their Motion to try to accomplish what they could not accomplish through the merits of their case and this Court must deny that abuse of the judicial process. Plaintiffs claim that the relief they seek would become moot if the relocated tower is constructed, however, Plaintiffs purposely fail to address that American Towers and its affiliated entities routinely construct

and deconstruct towers. American Towers can deconstruct a tower within 5-15 days. American Towers accepts and assumes the risk of building this relocated tower, and will agree, if this Court deems necessary, to post a tower removal bond as discussed herein.

Plaintiffs self-servingly claim that Defendants will not be harmed by staying construction of the relocated tower, however, American Towers has entered into a ground lease with Ms. Brenda Huggins which contains rent obligations and has negotiated revised agreements with the three cell phone carriers for the relocated tower. All three of the Cellular Carriers now expect that they will be relocating their equipment to the relocated tower in the very near future and have taken steps to move their equipment to the relocated tower. The relocated tower will provide better service coverage for at least two of three carriers and any delay will negatively impact American Towers' relationships with these carriers. In contrast, Plaintiffs will not incur any harm whatsoever from construction of the relocated tower. American Towers will continue to pay Johnson rent through January, 2015, the date that Johnson contends the Lease expires. (Cmplt. at ¶ 3). Upon information and belief, TriStar does not have any contractual relationships at the property, so there are no contractual relationships which could be impacted nor does TriStar have any property interest in the current tower on Johnson's property, despite TriStar's representations to this Court.

For these reasons and the reasons set forth herein, the Court must deny Plaintiffs' Motion and allow the current status quo - that the Final Judgment is not stayed pending appeal, and American Towers is allowed to proceed in the ordinary course of its business - to remain.

FACTUAL BACKGROUND¹

A. American Towers Owns The Tower Structure And The Tower Components

Since 1999, American Towers has owned and been operating its communications tower at the corner of Huggins Road and Route 9 in Myrtle Beach, South Carolina. American Towers has agreements in place with three cell phone carriers – T-Mobile, Horry Telephone, and Verizon Wireless (the “Cellular Carriers”) – whereby American Towers permits these Cellular Carriers to attach their broadcasting equipment to this tower.

American Towers leases the real property beneath its tower from the Landlord pursuant to a January 14, 1995 property lease to which American Tower and the Landlord are both successors-in-interest (the “Lease”). Under the Lease, the steel tower structure remains American Towers’ personal property at all times and must be removed at the expiration of the Lease. Paragraph 8 of the Lease specifically states:

8. Removal of Lessee’s Improvements Upon Termination. Lessor [Johnson] covenants and agrees that no part of the improvements constructed, erected or placed by Lessee [American Tower] on the Demised Premises shall become or be considered as being affixed to or a part of, the Demised Premises, any and all provisions and principles of law to the contrary notwithstanding, it being the specific intention of Lessor that all improvements of every kind and nature constructed, erected or placed by Lessee on the Demised Premises shall be and remain the property of Lessee. Lessee, upon termination of this Agreement shall within 120 days, remove all such improvements, including without limitation the tower, equipment building and any fencing, from the Demised Premises. The Demised Premises shall be returned in a condition that reasonably matches its original condition (except for any tree, shrub or other vegetation that was removed), reasonable wear and tear excepted. Lessee shall compensate Lessor, on a pro rata basis, for each day said personal property and fixtures remain on the Demised Premises after termination of this Agreement, at the monthly rent in effect at the time of termination until such time as removal of the improvements is completed.

(Lease at ¶ 8).

¹ The factual background is supported by the Affidavits of Robert McNeil and Jason Groseclose, attached hereto as Exhibits A-B.

Importantly, under the Lease, the Landlord (and her agents) has never and will never have any rights to the tower structure or any of the tower components. (Id.). Further, nothing prevents American Towers from deconstructing or removing the tower at any point in time—the tower is American Towers' exclusive property.

Pursuant to its terms, the Lease runs through January, 2015. In October, 2007, American Towers and the Landlord negotiated and signed an amendment to the Lease to extend the term of the Lease through January, 2030 (the "Lease Extension"). True and correct copies of the Lease and Lease Extension will be made available to the Court.

B. Plaintiffs' Own Acts Caused American Towers To Move Locations

Subsequently, at the initiative of American Towers' competitor TriStar and its subsidiary Minerva (TriStar and Minerva may be collectively referred to as "TriStar/Minerva"), in June, 2010, the Landlord and Minerva entered into an Exclusive Easement and Assignment Agreement (the "Easement Agreement"), pursuant to which the Landlord sold Minerva an easement to the land already being leased by American Towers. (Cmplt. at ¶ 12). TriStar/Minerva claim that their easement at the property begins at the expiration of American Towers' lease in 2015. (Id. at ¶ 3). In exchange, the Landlord received an up-front one-time \$100,000 payment. (Id.). The Landlord chose to do business with TriStar/Minerva in exchange for the up-front \$100,000 payment rather than to seek further monthly rent after the Lease term from American Towers.

Once American Towers learned of the Easement Agreement, American Towers filed suit against the Landlord and TriStar/Minerva to determine the rights of the parties and to enforce the Lease Extension through the year 2030 (the "Lease Lawsuit"), Case No. 2012-CP-26-2912, *American Towers, LLC v. TriStar Investors, Inc., et. al.*, pending in Horry

County: In the Lease Lawsuit, due to the Lease Extension, American Towers alleged that the term of its Lease with amendment runs through January, 2030 (Exhibit C, Lease Lawsuit Cmplt. at ¶ 12)², however, the Landlord and TriStar/Minerva all filed an Answer expressly denying that. (Exhibit D, Answer at ¶ 11). TriStar/Minerva vigorously claimed that the Lease Extension is not enforceable because TriStar/Minerva did not have notice of the Lease Extension when Minerva signed the Easement Agreement. (Cmplt. at ¶ 12, ft. 1).

After the Landlord and TriStar/Minerva denied the enforceability of the Lease Extension, and given that the original terms of the Lease end in 2015, American Towers sought an alternative location for its tower and found a much better broadcasting location on the property of Brenda Huggins, who was very interested in the consistent rental stream American Towers offered her to host the tower. American Towers' customers, the cellular companies, want to and choose to secure tower space far in advance of the time needed in order to test equipment, determine whether the tower site works with its current network, and generally guarantee ample service coverage to the public. To move forward with this better location and secure tower space for the carriers in a timely way as they require, American Towers signed an agreement with landowner Brenda Huggins to lease certain real property for relocating the tower (the "Huggins Lease"). Pursuant to the Huggins Lease, American Towers started paying Brenda Huggins rent in April, 2013.

² True and correct copies of the Complaint and Answer from the Lease Lawsuit are attached hereto as Exhibits C-D, respectively. This Court may take judicial notice of the Lease Lawsuit and pleadings filed in that case. *Wise v. Wise*, 394 S.C. 591, 600-601 (Ct. App. 2011) (court can take judicial notice of indisputable information, including prior lawsuits and the pleadings from prior lawsuits).

While American Towers started paying Brenda Huggins rent in April, 2013, American Towers intends on and will continue to pay rent to the Landlord Angeline Johnson through January, 2015, the date that Johnson contends the Lease expires. (Id. at ¶13).

American Towers also filed an application with the Horry County Planning & Zoning Department, seeking to relocate its existing tower to the Huggins Property (the "Relocation Application"). After reviewing the Relocation Application with supporting materials, the Horry County Planning & Zoning Department recommended that the Horry County Council approve the Relocation Application. Subsequently, on October 16, 2012, the Horry County Council held a public hearing to vote on the Relocation Application. A representative from at least one of the Cellular Carriers appeared at the hearing. Plaintiffs also appeared at the hearing, made a presentation, and were the only persons/entities which objected to American Towers' Relocation Application.

C. American Towers Is Already Being Harmed By The Delay.

Over TriStar/Minerva's objection, the Horry County Council unanimously approved the Relocation Application, as Resolution R-73-12. Upon approval of the relocation, American Towers negotiated revised agreements with the Cellular Carriers. The Cellular Carriers now expect that they will be relocating their equipment to the relocated tower in the very near future and have taken steps to move their equipment to the relocated tower, including ordering upgraded equipment for the relocated tower which will provide better service coverage. American Towers' relationships with these Cellular Carriers will be quickly and significantly impacted if American Towers does not meet their expectations and construct the relocated tower. American Towers does business with these three Cellular Carriers at numerous tower sites and a delay will have a substantial negative effect on these

relationships. Over a period of years, the negative impact could reach in the high hundreds of thousands of dollars on just one site alone.

Further, prior to the filing of this lawsuit, American Towers ordered materials to build the relocated tower and the upgraded equipment for carrier T-Mobile at a cost of approximately \$225,000. The materials and equipment have been delivered and American Towers is incurring storage costs to store these materials.

D. Other Litigation Between The Parties

American Towers, its affiliated entities (American Towers and its affiliated entities may be referred to collectively as "American Tower"), and TriStar are currently involved in litigation pending in the United States District Court for the Northern District of Texas, initiated by TriStar, in which the parties have asserted causes of action against each other for, among other things, unfair competition, business disparagement, and tortious interference (the "Texas Litigation"). TriStar admits in the Texas Litigation that it has acquired ground easements beneath over 600 of American Tower's towers. To support its counts in the Texas litigation, TriStar claims that American Tower *falsely* tells landowners that American Tower may relocate towers to other locations. TriStar claims that the alleged statements are false because American Tower has no intent to move towers. A true and correct copy of TriStar's Second Amended Complaint and Application for Permanent Injunction from the Texas Litigation is attached hereto as Exhibit E.

However, to the extent that American Tower has made such statements, such statements are true. American Tower does not move towers willy-nilly; however, under circumstances such as these where a landowner is refusing to acknowledge a lease extension and the lease term is soon expiring, American Towers has no option but to relocate a tower.

TriStar is pursuing this injunction only to try to stall American Towers from relocating this tower because TriStar wants to buttress its meritless claims in the litigation it filed in Dallas.

ADDITIONAL PROCEDURAL BACKGROUND

On November 8, 2012, Plaintiffs filed this administrative review, seeking an injunction preventing American Towers from relocating its tower. In an abundance of caution, the Honorable Larry B. Hyman, Jr., entered a temporary restraining order staying Resolution R-73-12 until this case could be heard on its merits (the "Injunction Order"). The Injunction Order does not prevent American Towers from deconstructing or removing its current tower, it only stays enforcement of Resolution R-73-12.

While the Honorable Larry B. Hyman, Jr.'s law clerk emailed counsel for the parties on December 11, 2012, indicating that the Court would stay Resolution R-73-12 pending hearing and requesting a proposed order from Plaintiffs' counsel, Plaintiffs did not submit a proposed order to the Court until late March, 2013. In fact, Plaintiffs waited so long to submit their proposed order that their actions delayed scheduling of the hearing of this case on its merits.

On Friday, April 26, 2013, the Court held a full hearing in this case. On the following Monday, April 29, 2013, the Court emailed the parties' counsel and affirmed the decision of the Horry County Council in adopting Resolution R-73-12. Plaintiffs later objected to Defendants' proposed order, seeking continued injunctive relief despite the Court's ruling, however, within minutes, this Court denied Plaintiffs' request and signed the Final Judgment as proposed by Defendants (the "Final Judgment"). A true and correct copy of the Final Judgment signed on May 8, 2013, entered on May 21, 2013, is attached hereto as Exhibit F. The Final Judgment vacates the previous Injunction Order, declaring it void.

While Judge Hyman's Injunction Order required that Plaintiffs post a security bond in the amount of \$5,000.00, Plaintiffs did not post their bond until May 7, 2013, over a week after this Court's April 29, 2013 ruling on the merits against the Plaintiffs.

STANDARD OF REVIEW

As admitted by Plaintiffs, the current status quo is that the Final Judgment is not stayed pending appeal, and American Towers is allowed to proceed in the ordinary course of its business and relocate its existing tower to a nearby property. (Mt. at ¶¶ 1, 10, 14). South Carolina Rule of Civil Procedure 62(a) states that, "an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal." See Rule 62(a), SCRPC.

Plaintiffs seek to change that status quo by blocking American Towers' lawful business activities and infringing on Horry County's rights to supervise and issue permits for construction in Horry County, despite this Court's ruling on the merits. To change the status quo and stay the Final Judgment, South Carolina Appellate Court Rule 241(c)(2) directs the Court to determine whether supersedeas is "necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." See SCACR 241(c)(2) (emphasis added). A case only becomes moot when a judgment will have no practical legal effect upon an existing controversy or when some event makes it impossible for the reviewing court to grant effectual relief. *S.C. Dept. of Revenue v. Club Rio*, 392 S.C. 636, 643, 709 S.E.2d 690, 694 (S.C. App. 2011). Plaintiffs have failed to and cannot show that changing the status quo and issuing a stay is necessary to preserve an issue from becoming moot.

ARGUMENT

I. Plaintiffs' Sought-After Relief Will Not Become Moot.

Plaintiffs argue that their appeal could become moot if American Towers relocates its existing tower; however, that argument is based on a falsehood. Without citing any evidentiary support, TriStar wrongly contends that after American Towers' Lease at the current property expires, TriStar would continue operating the tower. (Mt. at ¶ 5). However, TriStar will not and cannot operate the current tower at the end of American Towers' Lease as, per the terms of American Towers' Lease, American Towers is obligated to remove the tower and all components thereof from the property at the expiration of the Lease. (Lease at ¶ 8). The tower structure and all components thereof are American Towers' personal and exclusive property. Neither the Landlord nor her agents have any rights to them. Plaintiffs have not presented and cannot present any evidence, contractual provisions, or documents of any kind to the contrary.

Further, even if American Towers' tower is relocated, the relief requested by Plaintiffs would not become moot. American Towers is in the business of constructing, deconstructing, and operating communication towers. American Towers and its affiliated entities have built several thousand towers in the United States, and, have built approximately 800 towers in South Carolina, North Carolina, and Virginia over the past 12 years. American Towers can erect a communications tower within 15-45 days and can deconstruct a tower within 5-15 days. Even if American Towers relocates its tower, action which was unanimously approved by the Horry County Council, the relief sought by Plaintiffs would not be impossible, or even difficult, to effectuate. Plaintiffs fail to address this.

Constructing and deconstructing towers is routine for American Towers. If a reviewing court happens to enter an adverse ruling, American Towers could quickly deconstruct the relocated tower. American Towers accepts and assumes the risk of building the relocated tower with the appeal pending. In addition, if this Court deems it necessary, American Towers agrees to post a tower "removal bond", guaranteeing that funds sufficient to cover costs for removal of the relocated tower are available. Certain bonding companies have experience with issuing such tower removal bonds. In South Carolina, such bonds are typically in the amount of \$25,000. Again, if the Court deems it necessary, American Towers will agree to post a \$25,000 tower removal bond before constructing the relocated tower. This will sufficiently address and negate all allegations of Plaintiffs' unmeritorious claim becoming moot.

In addition to the lack of evidentiary support, Plaintiffs also do not have any legal support for their Motion. Three of the cases cited by Plaintiffs are inapposite and deal with family law issues. *Berry v. Ianuario*, 281 S.C. 21, 314 S.E.2d 308 (1983) (risk of natural father's paternal rights being terminated while appeal pending, including state officials changing the child's name and status); *Schwartz v. Schwartz*, 311 S.C. 303, 428 S.E.2d 748 (Ct. App. 1993) (interstate battle involving federal kidnapping act and custody of 6-year old daughter). In *Graham v. Graham*, 301 S.C. 128, 390 S.E.2d 469 (Ct. App. 1990), the court of appeals did not even take any action on the supersedeas, but rather, just remanded for clarification on the family court's order. *Id.* at 130.

The case S.C. *Dept. of Revenue v. Sandalwood Social Club*, 399 S.C. 267, 731 S.E.2d 300 (Ct. App. 2012), cited by Plaintiffs actually supports Defendants' position that business activities should not be stayed pending appeal. In *Sandalwood Social Club*, an

administrative law judge suspended a resort owner's beer and wine permit and liquor license for 60 days. The resort owner moved for supersedeas, and the court of appeals granted that relief, thereby allowing the resort owner to continue operations pending appeal. *Id.* at 276.

II. Halting Construction Will Harm American Towers And Its Carriers.

To the contrary of Plaintiffs' claims, the issues in this case could become moot and American Towers will be harmed if the Court *granted* Plaintiffs' Motion. Plaintiffs have taken the position in this lawsuit that American Towers' Lease at the current property expires in January, 2015. (Cmplt. at ¶ 12). Not only have Plaintiffs taken that position in this case, but Plaintiffs have taken that position in the Lease Lawsuit. (Exhibits C, D). Due to Plaintiffs' disavowal of the Lease Extension, American Towers was forced to locate other property for its tower and signed the Huggins Lease. American Towers has started paying Brenda Huggins rent under that Huggins Lease.

American Towers also negotiated revised agreements with all three of the Cellular Carriers for the relocated tower. All three of the Cellular Carriers now expect that they will be relocating their equipment to the relocated tower in the very near future. The Cellular Carriers have taken steps to move their equipment to the relocated tower, including ordering upgraded equipment for the relocated tower which will provide better service coverage. American Towers does business with these three Cellular Carriers at numerous tower sites and a delay could have a substantial negative effect, in the millions of dollars, on these relationships. Additionally, the materials and equipment for the relocated tower have been delivered and American Towers is incurring costs to store these materials.

As a general rule, American Towers' customers, cellular companies, require and choose to secure tower space far in advance of the time needed in order to test equipment,

determine whether the tower site works with its current network, obtain information on the height needed for the equipment, and generally guarantee ample service coverage to the public. If construction of the relocated tower does not continue, American Towers' ability to meet customer demands will be compromised.

A delay in constructing the relocated tower will also substantially negatively impact telecommunications service coverage in Horry County. Verizon Wireless and T-Mobile expect that they will be able to quickly provide better coverage and service in this area to consumers, with T-Mobile having new, upgraded equipment on the relocated tower.

In contrast, Plaintiffs will not incur any harm whatsoever from construction of the relocated tower. The Landlord received an up-front \$100,000 payment and American Towers will continue to pay Johnson rent through January, 2015, the date that Johnson contends the Lease expires. (Cmplt. at ¶ 3). TriStar has not alleged any contractual relationships at the property, so there are no contractual relationships which could be impacted, TriStar has absolutely no right to the tower steel at the current location, and TriStar has no right to build a new tower anywhere on the Landlord's property.

As already recognized by this Court, this appeal is not brought because of any error made by the Horry County Council or its Planning & Zoning Department. (Exhibit F, Final Judgment). This case is brought because TriStar is trying to stymie its competition. If, through this Court's decisions, American Towers is forced to operate from the existing property site rather than relocate, TriStar hopes to extort American Towers into renewing the property lease on its terms or for American Towers to purchase its easement rights. Even delays in construction will negatively impact American Towers' relationships with the Cellular Carriers which work to Plaintiffs' advantage. This Court cannot allow judicial

proceedings to be so easily abused.

Further, TriStar seeks to block and delay American Towers' actions in relocating this tower in an improper attempt create evidence for the Texas Litigation. TriStar claims in the Texas Litigation that American Tower unfairly competes by stating that it will move towers without intention to do so. TriStar worries that the relocation of a tower would prove TriStar's claim in the Texas Litigation as false as it is. Because of the Texas Litigation, Plaintiffs will continue to delay hearing of this case on its merits as they have done in the past. Once receiving news that the Honorable Judge Hyman intended to enter a temporary injunction on December 11, 2012, Plaintiffs did not submit a proposed injunction order until late March, 2013— they didn't need a ruling on the merits; they just wanted temporary relief to prevent construction of the relocated tower until after the October 28, 2013 trial date in the Texas Litigation.³

This Court cannot allow a disgruntled competitor from indefinitely blocking legitimate business activities and Horry County's management of utilities within the County, especially given the substantial unlikelihood of this Court's May 21, 2013 Final Judgment being altered in any way. Rather than showing that the relocation of American Towers' existing tower would make it impossible for the reviewing court to grant relief, Plaintiffs self-servingly and *erroneously* claim that American Towers will not be harmed by a stay. The Court should not allow Plaintiffs, competitors of American Towers, to indefinitely

³ As further evidence of their motives, Plaintiffs have consistently claimed that the Lease only runs through 2015. However, Plaintiffs only now try to "concede" that the Lease may run through 2030. (Mt. at ¶ 17). This belated concession is another attempt to get American Towers to stay at the current property location until after the conclusion of the trial in the Texas Litigation. TriStar does not want to have a fact out there – that American Towers moves its towers when necessary – which contradicts its speculation and claims.

disturb and disrupt Horry County's management of utilities and construction within the County, especially absent factual evidence, legal support, or grounds to appeal.


III. Likelihood Of This Court's Order Being Affirmed And Unlikelihood Of Final Judgment Being Altered.

This Court should take into account that it is extremely unlikely that a reviewing court would alter this Court's Final Judgment in any way. This case is not a "close call" case. The Horry County Council's decision is like that of a zoning board which shall not be upset unless arbitrary, unreasonable, in obvious abuse of discretion, or in excess of lawfully delegated power. (Cmplt at p. 8; fn. 3); *Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals*, 342 S.C. 480, 488, 536 S.E.2d 892, 896 (Cl. App. 2000). Plaintiffs cannot meet that high burden. Horry County Council's Relocation Resolution and this Court's Final Judgment were well-reasoned and based on a significant factual record.

CONCLUSION

Given the harm occurring to American Towers and Horry County, the complete lack of harm to Plaintiffs, and the improper motives of Plaintiffs in seeking this relief, Defendant American Towers, LLC respectfully requests that this Court deny Plaintiffs' Motion and grant any other and further relief that this Court deems proper and just. The status quo – that the Final Judgment is not stayed pending appeal, and American Towers is allowed to proceed in the ordinary course of its business – should remain.

Respectfully Submitted,

By: 

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STATE OF SOUTH CAROLINA
COUNTY OF Horry

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

Plaintiffs,

v.

THE Horry COUNTY COUNCIL,
and AMERICAN TOWERS, LLC,

Defendants.

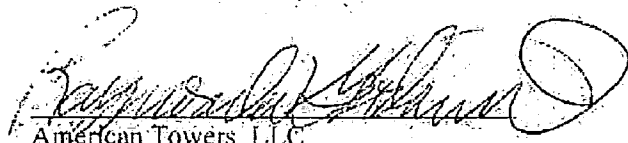
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C/A No. 2012-CP-26-86852

DEFENDANT
AMERICAN TOWERS, LLC'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR SUPERSEDEAS

VERIFICATION

On behalf of Defendant American Towers, LLC ~~LLC~~ ^{LLC} ~~LLC~~ ^{LLC} American Towers, Inc. ("American Towers"), in accordance with applicable law, I, Raymond W. Goodwin hereby verify the contents of this Opposition to Plaintiffs' Motion for Supersedeas.


American Towers, LLC

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

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

Plaintiffs,

vs.

THE HORRY COUNTY COUNCIL, and
AMERICAN TOWER CORPORATION,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C/A No. 2012-CP-26-8652

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT OF JASON GROSECLOSE

Before me, the undersigned authority in and for said State and County, personally appeared Jason Groseclose who, after being first duly sworn under oath, doth depose and say as follows:

1. My name is Jason Groseclose. I am over the age of twenty-one and submit this affidavit based upon personal knowledge of the information contained herein, about which I am competent to testify.

2. I am employed as a Project Manager for American Tower Corporation. In that capacity, I also work for American Towers, LLC ("American Towers"), an entity related to American Tower Corporation, and have knowledge of the business and transactions of American Towers.

3. In my position, I have extensive personal knowledge of American Towers'

operating procedures. In addition, I am familiar with and have access to American Towers' business records, including how such records are maintained.

4. American Towers is in the business of owning and operating communications sites for the wireless industry. American Towers will lease real property from a landowner, obtain the necessary zoning and building permits, and build a tower. The towers themselves are owned by American Tower, just located on leased land. American Towers then finds and negotiates rates with telecommunications carriers who lease space on the tower from American Towers.

5. I have knowledge of the history of American Towers' telecommunications facility located at the corner of Huggins Road and Route 9, Loris, South Carolina 29572 (the "Finklea Site").

6. I am American Towers' Project Manager for the Finklea Site. My duties include communicating with the carriers that lease space on our tower, and relocation of our tower to the Brenda Huggins' Property.

7. Three cellular telephone companies – T-Mobile, Horry Telephone Company, and Verizon Wireless – currently lease space and maintain signaling equipment on American Towers' tower at the Finklea Site. Once the Horry County Council approved Resolution R-73-12 for the relocation of American Towers' tower, American Towers contacted these three telecommunications carriers. American Towers advised these carriers of the relocation of the tower.

8. American Towers has contracts with all three of these carriers whereby American Towers is obligated to provide them with tower space in the area.

9. All three of the carriers agreed to move their equipment to the relocated tower.

10. All three of the carriers now expect that they will promptly need to relocate their equipment due to relocation of the tower.

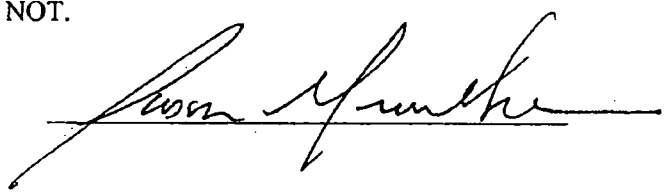
11. American Towers ordered and has incurred the costs for materials and due diligence to build the relocated tower at an expense of approximately \$200,000.

12. American Towers expects that the materials to build the relocated tower will to be delivered to Brenda Huggins' Property within approximately 4-6 weeks, without a place to store the equipment.

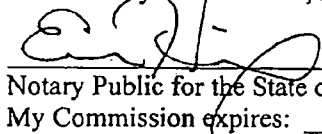
13. Verizon Wireless has stated that the relocated tower would be better for its network.

14. American Towers' relationships with the carriers will be harmed if American Towers does not meet their expectations. American Towers does business with these three carriers at numerous tower sites and a delay would have a substantial negative effect on American Towers business.

FURTHER AFFIANT SAYETH NOT.



SWORN and subscribed to before me
this 10th day of December, 2012.

 (L.S.)
Notary Public for the State of South Carolina
My Commission expires: 6-9-21



STATE OF SOUTH CAROLINA
COUNTY OF HORRY

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

Plaintiffs,

vs.

THE HORRY COUNTY COUNCIL, and
AMERICAN TOWER CORPORATION,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C/A No. 2012-CP-26-8652

STATE OF Texas)
COUNTY OF Dallas)

AFFIDAVIT OF ROBERT MCNIEL

Before me, the undersigned authority in and for said State and County, personally appeared Robert McNiel who, after being first duly sworn under oath, doth depose and say as follows:

1. My name is Robert McNiel. I am over the age of twenty-one and submit this affidavit based upon personal knowledge of the information contained herein, about which I am competent to testify.

2. I am employed as a Director of Strategic Site Development for American Tower Corporation. In that capacity, I also work for American Towers, LLC ("American Towers"), an entity related to American Tower Corporation, and have knowledge of the business and transactions of American Towers.

3. In my position, I have extensive personal knowledge of American Towers' operating procedures. In addition, I am familiar with and have access to American Towers' business records, including how such records are maintained.

4. American Towers is in the business of owning and operating communications sites for the wireless industry. American Towers will lease real property from a landowner, obtain the necessary zoning and building permits, and build a tower. The towers themselves are owned by American Tower, just located on leased land. American Towers then finds and negotiates rates with telecommunications carriers who lease space on the tower from American Towers.

5. I have knowledge of the history of American Towers' telecommunications facility located at the corner of Huggins Road and Route 9, Myrtle Beach, South Carolina 29572 (the "Finklea Site").

6. Three cellular telephone companies currently lease and use space on the tower at the Finklea Site to broadcast and transmit voice and data signals.

7. American Towers' tower at the Finklea Site is approximately 300 feet in height.

8. American Towers obtained the right to operate its tower at the Finklea Site through a lease. Angeline Johnson ("Landowner") and American Towers are the successors-in-interest to the lessor and lessee, respectively, under a January 14, 1995 Lease Agreement entered into between Louise D. Strickland, then the landowner of the Finklea Site, and Vanguard Cellular Systems of South Carolina, Inc. (the "Lease Agreement").

9. Pursuant to its original terms, the Lease Agreement runs through January, 2015.

10. Upon expiration of the Lease Agreement, lessee American Towers is obligated to remove the tower and all components thereof from the property. In the event that American Towers does not remove the tower and its components from the property, American Towers is penalized and obligated to pay additional rent. Paragraph 8 of the Lease Agreement expressly provides that:

8. Removal of Lessee's Improvements Upon Termination. Lessor [Johnson] covenants and agrees that no part of the improvements constructed, erected or placed by Lessee [American Tower] on the Demised Premises shall become, or be considered as being affixed to or a part of, the Demised Premises, any and all provisions and principles of law to the contrary notwithstanding, it being the specific intention of Lessor that all improvements of every kind and nature constructed, erected or placed by Lessee on the Demised Premises shall be and remain the property of Lessee. Lessee, upon termination of this Agreement shall within 120 days, remove all such improvements, including without limitation the tower, equipment building and any fencing, from the Demised Premises. The Demised Premises shall be returned in a condition that reasonably matches its original condition (except for any tree, shrub or other vegetation that was removed), reasonable wear and tear excepted. Lessee shall compensate Lessor, on a pro rata basis, for each day said personal property and fixtures remain on the Demised Premises after termination of this Agreement, at the monthly rent in effect at the time of termination until such time as removal of the improvements is completed.

11. In addition to requiring American Towers to remove the tower upon expiration of the lease, ¶ 8 makes clear that the tower and its components are owned and controlled by American Towers at all times. Neither Landowner nor its agents have rights to the tower itself.

12. In October, 2007, American Towers and the Landowner negotiated and signed an amendment to the Lease Agreement to extend the duration of American Towers' lease at the site through January, 2030 (the "Lease Extension").

13. American Towers tried to continue to operate from Landowner's property, but when Landowner/TriStar/Minerva denied the enforceability of this Lease Extension, American Towers sought to relocate its tower currently located at the Finklea Site to

another property.

14. On June 28, 2012, American Towers signed an agreement with landowner Brenda G. Huggins (the "Huggins Lease") to lease certain property near American Towers' Finklea Site (the "Huggins Property"). The Huggins Property is located at 215 Huggins Road, Loris, South Carolina, approximately ½ mile away from the current tower site.

15. A true and correct copy of a Memorandum of Lease, which memorializes certain public terms of the Huggins Lease is attached to American Tower Corporation's Memorandum in Opposition to Plaintiffs' Application for Temporary Restraining Order and Preliminary Injunction (the "Memorandum").

16. On or about August 31, 2012, American Towers filed a petition with the Horry County Planning & Zoning Department, seeking to relocate its existing tower at the Finklea Site to the Huggins Property (the "Relocation Petition"). A true and correct copy of American Towers' Relocation Petition with the supporting materials is attached to the Memorandum.

17. The proposed relocated tower would be 300 feet in height.

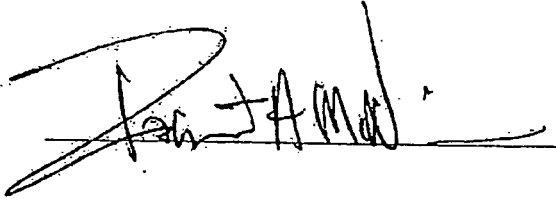
18. Plaintiffs in this action named American Tower Corporation as a Defendant, however, American Towers, LLC applied for and was granted the permit to construct its tower at the Huggins Property.

19. American Towers has communicated with the telecommunications carriers who have leased space on American Towers' tower at the Finklea Site regarding the relocation. All of the carriers have agreed to move their equipment to the proposed tower on Brenda Huggins' property.

20. American Tower has built several thousand towers in the United States over the last 12 years and approximately 800 towers in South Carolina, North Carolina, and Virginia.

21. Based on my experience, American Towers is able to construct a 300' telecommunications tower within a period of 15-45 days. American Towers is able to deconstruct a 300' tower within 5-15 days.

FURTHER AFFIANT SAYETH NOT.



SWORN and subscribed to before me
this 5th day of December, 2012.



(L.S.)

Notary Public for the State of TEXAS
My Commission expires: 9/11/16

