THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
The Honorable Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2024-000659

David L. Lambert and Julia H. Beamish, ... Appellants,

v.

Aiken County Planning Commission, Aiken County Government, Pyramid Network Solutions for Verizon Wireless, ...Respondents.

VERIZON WIRELESS' INITIAL BRIEF

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2. WHETHER THE CIRCUIT COURT RIGHTLY CONCLUDED THAT EVIDENCE IN THE RECORD SUPPORTS THE COMMISSION'S DECISION TO GRANT VERIZON'S APPLICATION AND THUS THE COMMISSION DID NOT ABUSE ITS DISCRETION IN GRANTING THAT APPLICATION.

STATEMENT OF THE CASE

This is an appeal of the Circuit Court's December 28, 2023, Order ("**the Order**") upholding the Aiken County Planning Commission's ("**Commission**") approval of Verizon Wireless' application[1] for a permit to build a wireless telecommunications facility (cell tower) in a rural area that currently has poor wireless service.[2] In upholding the Commission's decision to grant the application, the Circuit Court determined: (1) the Commission maintained a sufficient record of its decision in compliance with applicable law, and (2) that such record supports the Commission's approval of the application and that the Commission thus acted well within its discretion in approving it. Order, at pp. 4-8.

Appellants contend those determinations were in error. They submit the Commission did not satisfy its legal obligation with regard to a record of its decision, and that the evidence "does not support" the Commission's decision to grant Verizon's application for the cell tower because restrictive covenants and an Aiken County ordinance prohibit the cell tower on the property in

[1] Pyramid Network Solutions applied for the permit on behalf of Verizon Wireless ("**Verizon**").
[2] Aiken County Land Management Regulations delegate approval of applications for wireless telecommunications facilities to the Commission. Aiken County LMR § 24-3.5.5. ("The county planning and development department is the officially designated agency of the county to which applications" for new wireless telecommunications facilities "must be made, and that is authorized to review, analyze, evaluate, and make recommendations regarding granting, denying, or revoking of such permits").

question. Appellants' Initial Brief, at pp. 6-13. Appellants' criticisms are meritless. As outlined below, the Commission's record is sufficiently thorough, reflects that the restrictive covenants do not prohibit the cell tower,[3] evidences that the cell tower complies with all applicable ordinances, and supports the grant of the application.

A. Verizon's Application for Cell Tower

In September 2022, Verizon filed an application with the Commission to build a cell tower on a small portion of a rural tract of property located at Old 96 Indian Trail Road in Aiken County, South Carolina ("**Indian Trail Property**") (Tax Parcel No. 262-00-01-002). Order, at p. 1. Per Verizon's application packet, the cell tower will address wireless coverage deficiencies that exist in the rural area and thereby "improve customer experience." ROA, at Ex. 2, at pp. 48-69 (Noting: "The new site will help us to address customer issues and complaints"). See also Order at p. 1.

The Indian Trail Property consists of over one hundred (100) acres of vacant, wooded land. Order, at n.1. Of relevance to this appeal, the Indian Trail Property is adjacent to Appellants' property. Id., at p. 1. Although Verizon's application packet notes that the proposed cell tower will be located a significant distance away from Appellants' Property line, ROA, at Ex. 2, at p. 65, Appellants opposed Verizon's application before the Commission, arguing that restrictive covenants apply to the Indian Trail Property and prohibit any commercial activity on the land, such as operation of a cell tower, and that the cell tower is not in accord with an Aiken County ordinance. Appellants' Initial Brief, at p. 11.

1. The Indian Trail Property

By way of background, the Indian Trail Property previously was a part of a larger tract of land (Tax Parcel No. 262-00-01-002) that Gerald L. Waters ("**Waters**") purchased on January 23,

[3] As noted below and by the Order, Appellants waived any issue on appeal about the restrictive covenants. Order, at p. 7; infra at pp. 23-26.

2006 ("**the Waters Parcel**"). The deed for that purchase shows that the Waters Parcel was ***not*** subject to any restrictive covenants at the time of sale. ROA, at Ex. 8, at pp. 45-50; Verizon Memo. in Opp. to Appeal, at Ex. A. (Waters Parcel Deed). Several years after purchasing the Waters Parcel, Waters subdivided and sold portions of the real estate to Appellants and the Gerald L. Waters Living Trust ("**Waters Trust**"). In doing so, Waters subjected Appellants' property to certain restrictive covenants.

In March 2010, Waters sold a 17-acre portion of the Waters Parcel (now known as Tax Parcel No. 262-00-01-043) to Appellants ("**Appellants' Property**"). ROA, at Ex. 8, at pp. 51-56; Verizon Memo. in Opp. to Appeal, at Ex. B (Appellants' Deed). In conveying this land to Appellants, Waters included language in the deed which expressly provides that Appellants' Property is subject to restrictive covenants for "Bluffwood East" ("**Restrictive Covenants**"). Id. Specifically, Appellants' deed ("**Appellants' Deed**") provides:

> This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats as well as those Restrictive Covenants for Bluffwood East set forth on Exhibit A attached hereto and incorporated herein.

ROA, at Ex. 8, at pp. 51-56. As indicated, Appellants' Deed also attaches a copy of the Restrictive Covenants, which are dated October 7, 2004. Id. In relevant part, the Restrictive Covenants prohibit commercial activity on Appellants' Property.[4] Id. See also Appellants' Initial Brief, at p. 2.

Roughly four years after the sale of Appellants' Property, Waters, in March 2014, conveyed the remainder of the Waters Parcel – Tax Parcel No. 262-00-01-002 and what is referred to herein

[4] The Restrictive Covenants' language also states that the covenants apply to the property described in Appellants' Deed. Id. ("The property described herein is specifically made subject to the following Restrictive Covenants").

as the "Indian Trail Property" – to the Waters Trust. Significantly, ***unlike Appellants' Deed***, the Indian Trail Property's deed ("**Indian Trail Property Deed**"):

- Does ***not*** contain any language referencing the Restrictive Covenants or making the Indian Trail Property subject to any restrictive covenants, and
- Does ***not*** attach the Restrictive Covenants as an exhibit.

See Verizon's Memo. in Opp., at Ex. C; ROA, at Ex. 8, at pp. 57-61 and Ex. 11.

The Waters Trust has agreed to lease a portion of the Indian Trail Property to Verizon for the construction and operation of the cell tower in question. Oct. 16, 2023, Hearing Transcript, at 26:15-27:7.

B. Planning Commission Consideration and Granting of Verizon's Application

1. Commission Staff Report

Following Verizon's submission of its application for the cell tower, the Commission's staff analyzed the application and whether it complied with Aiken County's Land Management Regulations for new telecommunication towers.[5] ROA, at Ex. 2, at pp. 45-47. In relevant part, the County's Land Management Regulations permit the Commission to "disapprove" an application for a new wireless telecommunications facility if "substantial evidence in the record before it" shows the facility will:

a) "[c]onflict with safety and safety-related codes and requirements[;]

b) [c]onflict with a designated historical site[;]"

c) "[t]he placement and location of [the proposed cell tower] would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the county, or employees of the service provider or other service providers[;]

[5] Aiken County Land Management Regulation § 24-3.5.5 provides: "The county council hereby authorizes the staff of the county planning and development department to accept, review, analyze, evaluate and make recommendations to the planning commission with respect to the granting or not granting or revoking permits for wireless telecommunications facilities."

d) (d) [c]onflicts with the provisions of [Land Management Regulation §] 24.3-5[;]

Aiken County LMR § 24-3.5.7 (Providing "[t]he planning commission *may* disapprove an application" for the reasons set forth above) (Emphasis added).

Commission staff concluded in a written report to the Commission ("**Staff Report**") that "substantial evidence" did ***not*** indicate any of the above reasons for disapproval existed. Per the Staff Report, Verizon's proposed cell tower did not conflict with any safety codes or designated historical site and there were no known "unacceptable risk[s] or reasonable probability of such" with regard to the placement and location of the cell tower. ROA, at Ex. 2, at pp. 45-47. The Staff Report also noted Verizon's application had several deficient items. Id.

2. Commission Meetings on Verizon's Application

Following receipt of the Staff Report, the Commission considered Verizon's application at multiple public meetings. Order, at p. 2. There is a record of each meeting, which includes each meeting's agenda, minutes, and transcript. ROA, at Exs. 2-10.

i. Commission's October 20, 2022, Meeting

The Commission's first meeting on Verizon's application was on October 20, 2022. As noted, the record for this meeting includes an agenda, minutes, and a transcript. ROA, at Ex. 2 (Oct. 20, 2022, Meeting Agenda); id., at Ex. 3 (Oct. 20, 2022, Meeting Minutes); id., at Ex. 4 (Oct. 20, 2022, Meeting Transcript).

At this meeting, the Commission reviewed Verizon's application and the Staff Report about it. ROA, at Ex. 2 (Oct. 20, 2022, Meeting Agenda), at p. 2 (Identifying Verizon's application as Presentation No. 6), pp. 45-47 (Staff Report), and pp. 48-68 (Verizon's application); id., at Ex. 3 (October 20, 2022, Meeting Minutes), at p. 7 (Questioning Verizon about the deficient items listed in the Staff Report). Verizon assured the Commission it would remedy the deficiencies identified

in the Staff Report before permit and that the proposed cell tower complies with "all federal, state, and local requirements," including Aiken's Land Management Regulations. ROA, at Ex. 3, p. 7; id., at Ex. 4 (Transcript of Oct. 20, 2022, Meeting), at pp. 4-5. However, Appellant David L. Lambert ("**Appellant Lambert**") argued that Verizon's application violated the Restrictive Covenants. He also notified the Commission that he had retained counsel to represent him in the matter. ROA, at Ex. 3, at p. 7. In light of Appellant Lambert's retention of counsel, the Commission tabled Verizon's application until its November 2022 meeting. Id.

Thereafter, the Commission's counsel sent an October 21, 2022, email to Appellant Lambert and Verizon, inviting them to "submit in writing to the Commission any comments" they had about the Restrictive Covenants' impact on the proposed cell tower. Id., at Ex. 8, at p. 42-43. He also requested Appellant Lambert provide the Commission with a "full copy of the restrictive covenants." Id.

In response to the Commission's request, Verizon sent a November 15, 2022, email to the Commission's attorney, explaining that "there are no restrictive covenants that apply" to the Indian Trail Property ("**Verizon Email**"). Order, at p. 2; see also ROA, at Ex. 6, at pp. 4-5 and Ex. 8, at pp. 41-63. The Verizon Email explained to the Commission that when Waters sold Appellants' Property to them, he "attached restrictive covenants" to their Deed, but, when he subsequently conveyed the Indian Trail Property to the Waters Trust, he did not attach any such covenants to that deed. ROA, at Ex. 8, at p. 41. It emphasized that "[t]here is no mention of the Restrictive Covenants in that subsequent [Indian Trail Property] deed, which further evidences the fact that the Restrictive Covenants were only intended to apply to" Appellants' Property and *not* the Indian Trail Property. Id. The Verizon Email attached and provided to the Commission copies of the Waters Parcel Deed, Appellants' Deed, and the Indian Trail Deed. Id., at pp. 41-63.

ii. Commission's November 17, 2022, Meeting

On November 17, 2022, the Commission held a second meeting on Verizon's application. ROA, at Ex. 5 (Nov. 17, 2022, Meeting Agenda), at p. 2 (Identifying Verizon's application as Old Business No. 4) and pp. 37-59 (Verizon application materials). The record for this meeting includes an agenda, detailed minutes, and a transcript. ROA, at Ex. 5 (Nov. 17, 2022, Meeting Agenda), at pp. 1-2; id., at Ex. 6 (Nov. 17, 2022, Meeting Minutes), at pp. 4-5; and id., at Ex. 7 (Nov. 17, 2022, Meeting Transcript).

At this meeting, Appellants again argued that the Restrictive Covenants apply to the Indian Trail Property and prohibit the cell tower on it. Order, at p. 2; ROA, at Ex. 6 (Nov. 17, 2022, Meeting Minutes), at pp. 4-5. In doing so, Appellants shared with the Commission a "relatively old" and *unrecorded* August 18, 2004, "*Preliminary* Plat of Bluffwood East," which they contend depicts the Indian Trail Property as a part of Bluffwood East.[6] ROA, at Ex. 7 (Transcript of Nov. 17, 2022, Meeting), at pp. 20-24 (Emphasis added). See also id., at Ex. 14 (Preliminary plat). They submitted to the Commission that the preliminary plat, by allegedly showing the Indian Trail Property as "part of" Bluffwood East, somehow renders the Restrictive Covenants for Bluffwood East applicable to that Property (and thus prohibit the cell tower). Id., at Ex. 7, at pp. 20-24. However, in evaluating the preliminary plat, the Commission noted the plat plainly was "preliminary," not "stamped," not "signed off," and "not recorded." Id., at pp. 32-34. Additionally, the preliminary plat does not mention or reference the Restrictive Covenants (and the Restrictive Covenants does not reference this unrecorded preliminary plat). ROA, at Ex. 14.

[6] As the transcript from the Commission's November 17, 2022, meeting reflects, Appellants did not identify the Indian Trail Property as any particular "lot number" depicted on the preliminary plat of Bluffwood East. However, Appellants now – for the first time on appeal – contend the Indian Trail Property is one of two "Lot 34's" labled on the preliminary plat. Of note, the preliminary plat does not appear to identify Appellants' Property as any "lot number." See ROA, at Ex. 14 (Preliminary plat).

At the November 2022 meeting, Appellants also provided the Commission with a stand-alone copy of the Restrictive Covenants. However, they did not provide the Commission with a copy of any deed to which the Restrictive Covenants are attached. Order, at p. 2; ROA, at Ex. 6, at pp. 4-5. The Commission's attorney "questioned whether the covenant documents provided to the Commission by [Appellants were] part of a deed," and noted it was "unclear" on their face "whether [they] applied to the entire subdivision or only to a referenced, but not presented, individual property deed." ROA, at Ex. 6, at p. 5. See also id., at Ex. 7, at pp. 27-28. Appellants admitted that, although the Restrictive Covenants state they apply to "the property described herein," they do not actually contain a "property description." Id., at Ex. 6, at p. 5; id., at Ex. 7, at pp. 28-29. As noted, the Restrictive Covenants also do not reference or incorporate any unrecorded, preliminary plat.

Ultimately, the Commission tabled Verizon's application a second time to allow Appellants an opportunity to produce a deed that attaches the Restrictive Covenants to it. Id., at Ex. 6, at p. 5.

A few days after the November 17, 2022, meeting, the Commission's attorney sent a November 21, 2022, letter to Verizon and Appellants, outlining the information that the parties had presented to the Commission and which are "in the record," such as the Restrictive Covenants, deeds for Appellants' Property and the Indian Trail Property, and the Verizon Email. ROA, at Ex. 8, at pp. 38-88. The letter also requested the parties "submit any [other] relevant documents or exhibits" prior to the next Commission meeting. Id.

iii. Commission's January 19, 2023, Meeting on & Approval of Application

On January 19, 2023, the Commission held a third meeting on Verizon's Application. That meeting is reflected by an agenda, minutes, and a transcript. ROA, at Ex. 8 (Jan. 19, 2023, Meeting

Agenda); id., at Ex. 9 (Jan. 19, 2023, Meeting Minutes), at p. 4; id., at Ex. 10 (Jan. 19, 2023, Meeting Transcript).

At that meeting, Appellants again contended the Restrictive Covenants prohibit the cell tower and argued the "cell tower do[es] not meet Aiken County regulations." ROA, at Ex. 9, at p. 4. Verizon, through a representative and attorney, reiterated its position otherwise and noted the Restrictive Covenants "were established in 2004," before Waters even purchased the Indian Trail Property in 2006. Id.

At the conclusion of the meeting, the Commission, by majority vote, approved Verizon's application with contingencies "**based on information received**." Id. (Emphasis added). The Commission's written minutes for the January 19, 2023, meeting reflect that approval, stating:

> Vice-Chairwoman Stewart made a motion to recommend approval based on information received. Mr. Adams seconded the motion. The motion was approved with a three to one vote, with Mr. Harris voting in opposition.

Id.

Subsequently, Aiken County's Planning and Development Department provided written notice to Verizon about the Commission's approval of its application. ROA, at Ex. 1.

C. Appellants' Appeal of the Commission's Approval of Verizon's Application to the Circuit Court

On February 20, 2023, Appellants filed a notice of appeal in Aiken County's Circuit Court, appealing the Commission's approval of Verizon's application for the cell tower on the Indian Trail Property. Appellants' notice of appeal asserted: (1) the Commission's "verbal decision" "is not supported by the evidence and other information presented to it" and (2) the Commission "did not consider certain factors outlined in the Code of Ordinances for Aiken County." Appellants' Notice of Appeal to Circuit Court. The notice of appeal did *not* include any express arguments about the Restrictive Covenants' applicability to the Indian Trail Property. Id.

Following Appellants' notice of appeal to the Circuit Court, the Commission filed a record on appeal, containing nearly three hundred (300) pages of documents, including Verizon's application, the Staff Report, agendas for and minutes from each of the Commission's meetings, transcripts from those meetings, and documents the parties had provided to the Commission about the Indian Trail Property and the Restrictive Covenants. See ROA, at pp. 1-299. Additionally, both the Commission and Verizon filed memorandum in opposition to the appeal with the Circuit Court. See Commission Return to Notice of Appeal and Verizon's Memo. in Opp.

On October 16, 2023, the Circuit Court held a hearing on Appellants' appeal. After considering "the pleadings, briefings, record on appeal, and arguments of counsel," the Circuit Court denied the appeal and issued the Order. Order, at p. 3.

In doing so, the Circuit Court held that applicable law did not require the Commission to issue a written decision about its approval of Verizon's application. Order, at pp. 4-5. Rather, such law only required the Commission to maintain a "record" of its resolutions, findings, and determinations, which the Circuit Court found the Commission had done. Id. The Circuit Court also determined the Commission's approval of Verizon's application was in accord "with all applicable regulations," including Aiken County's Land Management Regulations, and was "supported by the record." Id., at pp. 5-7. Thus, per the Circuit Court, the Commission's approval was "well within its discretion." Id., at p. 7. Lastly, the Circuit Court held that Appellants had "forfeited" any argument that the "proposed cell tower would violate certain restrictive covenants." Id. Per the Order:

> Appellants [failed] to provide arguments or supporting authority for their position even after Verizon argued extensively that the restrictive covenants do not apply at the hearing. Therefore, [the Court] find[s] the question of whether restrictive covenants apply to the Indian Trail [P]roperty [] is not properly before the Court in this appeal. Glasscock, Inc. v. U.S. Fid. & Guar. Co., 348 S.C. 76, 81,

> 557 S.E.2d 689, 691 (Ct. App. 2001) ("South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned and therefore not presented for review.") (internal citations omitted).

Id. "Nevertheless," the Circuit Court found that, even if Appellants had properly presented the issue of the Restrictive Covenants on appeal, the Restrictive Covenants, which are not referenced in or attached to the Indian Trail Property Deed, do not – "either by express language or unmistakable implication – apply to the Indian Trail Property or prohibit the construction or operation of the proposed cell tower." Id., at pp. 7-8.

On January 8, 2024, Appellants filed with the Circuit Court a motion to alter or amend the Order. Following a hearing, the Circuit Court denied the motion on March 20, 2024. March 20, 2024, Order by Circuit Court Denying Motion to Alter/Amend.

On April 24, 2024, Appellants appealed the Order to this Court.

STANDARD OF REVIEW

As in zoning board decisions, the standard of review in appealing decisions of a county planning commission is the abuse of discretion standard and the commission's decision will "not be disturbed if there is evidence in the record to support its decision." Responsible Econ. Dev. v. Florence Consol. Mun. Plan. Comm'n, No. 2005-UP-584, 2005 WL 7084861, at *2 (S.C. Ct. App. Nov. 16, 2005). See also Brick v. Richland Cnty. Plan. Comm'n, No. 2014-000583, 2016 WL 3200138, at *1 (S.C. Ct. App. June 8, 2016); Grays Hill Baptist Church v. Beaufort Cnty., 431 S.C. 630, 637, 850 S.E.2d 29, 33 (2020). Thus, an appellate court will not reverse the findings of a planning commission unless the findings are "arbitrary, capricious, ha[ve] no reasonable relation to a lawful purpose, or [] the [commission] has abused its discretion." Rest. Row Assocs. v. Horry Cnty., 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999). See also Kurschner v. City of Camden Plan. Comm'n, 376 S.C. 165, 174, 656 S.E.2d 346, 351 (2008).

Further, an appellate court "will not substitute [its] judgment for that of the reviewing body, even if [it] disagree[s] with the decision." Grays Hill, at 637, 850 S.E.2d at 33. Rather, it gives "well-recognized deference" to a board or commission's decision. Blalock v. City of Aiken, No. 2004-UP-057, 2004 WL 6248984, at *2 (S.C. Ct. App. Jan. 29, 2004). See also Responsible Econ. Dev., 2005 WL 7084861, at *2, *5 (Emphasizing that an appellate court "will refrain from second guessing a zoning authority's decision if the decision is fairly debatable"); Arkay, LLC v. City of Charleston, 418 S.C. 86, 91, 791 S.E.2d 305, 308 (Ct. App. 2016) ("The appellate court gives 'great deference to the decisions of those charged with interpreting and applying local zoning ordinances'") (Internal citation omitted).

ARGUMENT

A. The Circuit Court Correctly Determined that the Commission, in Compliance with Applicable Law, Sufficiently Kept a Record of Its Approval of Verizon's Application.

Appellants contend the Commission "erred, as a matter of law, in this case by failing to set forth in writing its findings and conclusions with respect to why it granted Verizon's application." Appellants' Initial Brief, at pp. 6-7. As the Circuit Court correctly determined, that argument is without merit. Applicable law only requires the Commission to maintain a "record" of its determinations. It does not require the Commission, which is comprised of lay persons, to draft a memorandum outlining findings of fact and conclusions. As explained below, the evidence clearly reflects the Commission satisfied its legal obligation by keeping a robust record of its decision to approve Verizon's application.

1. South Carolina Law Simply Requires the Commission to Maintain a Record of Its Decisions.

S.C. Code Ann. § 6-29-310 *et. seq.* ("**Local Planning Commission Act**") governs local planning commissions, such as the Aiken County Planning Commission. While the Act requires a local planning commission to keep a record of its decisions, it does not require a memorandum

in writing that sets forth the basis for those decisions. In fact, S.C. Code Ann. § 6-29-360 only generally requires planning commissions to "keep a record of its resolutions, findings, and determinations." There is no provision of the Act that requires a local planning commission to draft a written memorandum explaining findings of facts or its conclusions.[7]

In interpreting statutes such as Section 6-29-360, South Carolina courts employ '"[t]he cardinal rule of statutory construction," which is to "ascertain and effectuate the intent of the legislature," which "should be ascertained primarily from the plain language of the statute." State v. Morgan, 352 S.C. 359, 366, 574 S.E.2d 203, 206 (Ct. App. 2002). Courts give words in a statute "their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation." Id. Furthermore, "[w]hen faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning," and "[t]he statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." Id. at 367, 574 S.E.2d at 207.

[7] Notably, Appellants' citation of S.C. Code Ann. § 6-29-370 is misplaced as that statute imposes no written report requirement on the Commission with regard to decisions on cell tower applications.

Section 6-29-370 provides that a local planning commission's "governing authority," such as a city or county council, may refer matters to the commission, "with the provision that final action on it may not be taken until the planning commission has submitted a report on it or has had a reasonable period of time, as determined by the governing authority to submit a report" to the governing authority. See McClananan v. Council, No. 99-CP-40-2447, 2001 WL 36215946 (S.C.Com.Pl. Jan. 11, 2001) (Noting § 6-29-370 provides for reference of matters by Council to the Commission and for Council to determine when the Commission has had a reasonable period of time to report to it on the matter"). See also S.C. Code Ann. § 6-29-320 (Authorizing city and county councils to create planning commissions). Verizon's application for the cell tower is not a matter any "governing authority" referred to the Commission or that such governing body took "final action on" after obtaining a report from the Commission. As a result, § 6-29-370 is inapplicable in this matter.

In this case, the Act requires local planning commissions simply to "keep a record" of its resolutions, findings, and determinations. S.C. Code Ann. § 6-29-360. It does not define the term "record" or specify in what form the record must be. However, the plain and customary meaning of the noun "record" is broad, with the usual definition being "a piece of information or a description of an event that is written on paper or stored on a computer." https://dictionary.cambridge.org/us/dictionary/english/record (Last checked 11/15/2024). See also https://www.merriam-webster.com/dictionary/record (Last checked 11/15/2024) (Defining the noun "record" as "something that recalls or relates past events"); https://www.britannica.com/dictionary/record (Last checked 11/15/2024) (defining the noun "record" as "an official written document that gives proof of something or tells about past events"). By no usual or customary definition does the term "record" include a mandatory legal memorandum of factual findings or legal justifications.

Appellants' effort to interpret the statute otherwise wrongly asks the Court to "augment the statutory language to include a requirement for [] where the Act does not set forth such a requirement." State v. Cnty. of Florence, 406 S.C. 169, 180, 749 S.E.2d 516, 522 (2013). That is underscored by comparing § 6-29-360 with other provisions of the Act, such as S.C. Code Ann. § 6-29-830 and § 6-29-800(A)(2), which impose express requirements for ***zoning boards*** to make written findings of fact and conclusions. Specifically, §§ 6-29-830 and § 6-29-800(A)(2) include requirements for zoning boards to make decisions that include "findings of fact and conclusions" and explanations "in writing" of certain enumerated findings. The "fact that the Legislature opted to require findings of fact and conclusions" for zoning boards in certain instances, but not for land planning commissions, is indicative of the Legislature's intent to *not* impose such written formalities on land planning commissions. Alliance to Preserve the Old White Horse Road

Corridor, LLC v. RP&L, LLC, No. 2021-CP-23-03048, 2022 WL 20804832, at *3 (S.C.Com.Pl. Aug. 17, 2022) ("The inescapable conclusion of a review of the applicable statutes is that the Commission is not required to issue findings of fact and conclusions of law"). After all, it is well recognized that "[w]hen the legislature includes particular language in one section of a statute but omits it in another section of the same act, it is generally presumed that the legislature acts intentionally and purposely in such disparate inclusion or exclusion and that the legislature intended different results." 82 C.J.S. Statutes § 369.

Moreover, Appellants' attempt to impose legal memoranda requirements for local planning commission decisions would lead to an "absurd result" given that those commissions are not comprised of attorneys and often are made up of volunteers. S.C. Code Ann. § 6-29-350 (Setting forth membership requirements for local planning commissions, which do not include a legal degree, and noting that "[t]he compensation of the members, if any, must be determined by the governing authority or authorities creating the commission"); Oct. 16, 2023, Hearing Transcript, at p. 5:11-14 (Appellants admitting the Commission is "comprised of volunteer citizens here in Aiken County"); February 5, 2024, Hearing Transcript, at p. 19:13-20 (Noting that the Planning Commission does not issue detailed findings of fact, "that's not the nature of what they do"). See also Cnty. of Florence, at 174, 749 S.E.2d at 518 (Noting "[t]his Court will not construe a statute in a way which leads to an absurd result"). It also fails to recognize that Aiken County's own land management regulations do not require a detailed written explanation about the Commission's approval for a new cell tower. In fact, they simply require that, if the Commission "approves the permit for a wireless telecommunications facility, then the applicant shall be notified of such

approval in writing within ten (10) calendar days of the Planning Commission's action."[8] Aiken County LMR § 24-3.5.16(2).

In short, the Circuit Court correctly held that applicable South Carolina law does not impose any requirement on a local planning commission, like the Aiken County Planning Commission, to draft written memoranda detailing factual findings about or explaining its conclusions. Instead, the Act, in § 6-29-360, simply requires the Commission to "keep a record" of its "resolutions, findings, and determinations."

2. The Commission Satisfied Its Legal Obligation to Keep a Record of Its Decision on Verizon's Application.

As the Circuit Court found, the evidence supports that the Commission fulfilled its obligation under S.C. Code Ann. § 6-29-360 and kept a sufficient record of its decision to grant Verizon's application. Order, at pp. 4-5. Notably, Appellants even admit the Commission's record is "extensive." Oct. 16, 2023, Hearing Transcript, at p. 5:3-4. In fact, that record consists of nearly three hundred (300) pages, which include:

- Verizon's application for the cell tower, ROA, at Ex. 2, at pp. 48-69;
- The Staff Report about Verizon's application, which includes an evaluation of whether the application satisfies Aiken County's Land Management Regulations for new cell towers, id., at Ex. 2, at pp. 45-47;
- Detailed information about the Commission's consideration of Verizon's application and Appellants' objection to it, such as:
    - Agendas for the Commission's October and November 2022 meetings and January 2023 meetings ("**the Commission Meetings**") at which the Commission addressed the application;
    - Thorough minutes from each of the Commission Meetings; and
    - Transcripts of each of the Commission Meetings.

[8] Which occurred here. See ROA, at Ex. 1 (Jan. 25, 2023, approval letter).

Id., at Exs. 2-10.

- Documents provided by Verizon and Appellants to the Commission, including, the Restrictive Covenants; the Waters Parcel Deed; the Appellants' Deed, which references and attaches the Restrictive Covenants; the Indian Trail Property Deed, which does not reference or attach the Restrictive Covenants; and a preliminary, unrecorded plat of Bluffwood East. Id., at Exs. 6, 8, 14.

- Verizon's Email, which details why the Restrictive Covenants do not apply to the Indian Trail Property. Id., at Ex. 8, at pp. 41-63.

- Notice to Verizon from Aiken County's Planning and Development Department about the Commission's approval of Verizon's application. Id., at Ex. 1.

These records sufficiently document the Commission's decision to grant Verizon's application and (although not necessary) reflect the rationale for the decision. For instance, the Staff Report to the Commission concludes that "substantial evidence" does ***not*** exist for the Commission to disapprove the application under Aiken County LMR § 24-3.5.7. ROA, at Ex. 2, at pp. 45-47. See also Order, at pp 5-7 (Holding the record "reflects that the Commission considered" the factors of LMR § 24-3.5.7). Minutes of and transcripts from the Commission Meetings also reflect the Commission's rejection of Appellants' argument that the Restrictive Covenants apply to the Indian Trail Property. See, e.g. Wyndham Enterprises, LLC v. City of N. Augusta, 401 S.C. 144, 149, 735 S.E.2d 659, 662 (Ct. App. 2012) (Noting a zoning appeal board's "minutes normally constitute" its "final findings"). At the November 2022 meeting, the Commission emphasized that the preliminary plat Appellants relied on was "preliminary," not stamped, not "signed off," and "not recorded," and highlighted that the Restrictive Covenants themselves did not on their face apply to the Indian Trail Property. ROA, at Ex. 7 (Nov. 17, 2022, Meeting Transcript), at pp. 32-34, pp. 27-29; id., at Ex. 6, at p. 5. Additionally, minutes from the Commission's January 19, 2023, meeting reflect that the Commission's vote to approve Verizon's application was "***based on information received***" by the Commission, which as noted above was a plethora of documents, including the Staff Report, the Restrictive Covenants, relevant deeds, and

information from Verizon about the Restrictive Covenants' inability to the Indian Trail Property. Id., at Ex. 9, at p. 4 (Emphasis added). See also Oct. 16, 2023, Hearing Transcript, at p. 5:15-17 (Appellants admitting the Commission's vote to approve the application is "in the record").

Notably, Appellants' complaint that the Commission "made no findings or conclusions" with respect to Aiken County's "policy and desired goals for permits for wireless telecommunications facilities" is baseless and a red herring. The County's Land Management Regulation § 24-3.5.2 sets forth the County's "overall policy" and "goals" for cell tower permits, but it contains no *requirements* for such permits. It also does not mandate the Commission consider or outline consideration of the policy and goals in writing. Moreover, although Appellants gripe that the Commission "made no findings" about one § 24-3.5.2 goal in particular – the goal to locate cell towers "in such a manner as to minimize adverse, aesthetic, and visual impacts" on nearby land, property, buildings, and other facilities – they ignore that the Staff Report in fact analyzed that goal. The Staff Report evaluated whether the proposed cell tower conflicts with a designated historical site, whether the placement and location of the tower would create any unacceptable risk to individuals, including nearby residents, or otherwise conflict with the provisions of Land Management Regulation § 24.3-5. ROA, at Ex. 2, at pp. 45-47. It concluded it did *not*. Id. at Ex. 2, at p. 46 (Noting "the telecommunication tower regulations are intended to protect the County's health, safety, public welfare, environmental features, and nature and character of the community").

In sum, the Court should affirm the Circuit Court's determination that the Commission's record is "robust," Order, at p. 5, and sufficient to satisfy S.C. Code Ann. § 6-29-360(B)'s requirement to keep a "record" of "resolutions, findings, and determinations." That record more than adequately reveals the Commission's decision to grant Verizon's application and reflects its

rejection of Appellants' opposition to it. Moreover, Appellants' attempt to impose additional obligations on the Commission to issue written memoranda outlining findings and consideration of County "goals" is without merit or support in any statute or regulation.

B. The Circuit Court Correctly Determined That There Is Ample Evidence in the Record to Support the Commission's Decision to Grant Verizon's Application and that the Commission Thus Acted Within Its Discretion in Doing So.

The Court further should affirm the Circuit Court's holding that the Commission's decision to grant Verizon's application is supported by evidence in the record. Appellants' contention otherwise – and that the cell tower is prohibited by the Restrictive Covenants and does not comport with Aiken County Land Management Regulation § 24-3.5.2 – is baseless (and with regard to any argument about the Restrictive Covenants, is not even preserved for appellate review). In short, there are no grounds for this Court to disturb the Commission's findings. Chisolm Green Property Owners Ass'n, Inc. v. the Charleston County Planning Com'n, No. 2005-CP-10-4312, 2007 WL 5658876 (S.C.Com.Pl. Dec. 06, 2007) (Noting a planning commission's decision should not be disturbed on appeal unless the commission acted arbitrarily, with an abuse of discretion, or illegally or there is no evidence to support the decision).

1. Appellants Have Waived Any Appellate Argument about the Restrictive Covenants.

In appealing the Commission's grant of Verizon's application to both the Circuit Court and the Court of Appeals, Appellants, in nothing more than a conclusory fashion, submit that Restrictive Covenants prohibit the proposed cell tower. Notice of Appeal to Circuit Court, at ¶¶ 3-5; Appellants' Initial Brief, at p. 11. However, they fail to provide any supporting evidence for that argument. Thus, under long-standing South Carolina law, Appellants have abandoned any issue about the Restrictive Covenants on appeal.

"South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review."

Glasscock, at 81, 557 S.E.2d at 691. For example, in Brown v. Theos, 338 S.C. 305, 309, 526 S.E.2d 232, 235, at n. 2 (Ct. App. 1999), aff'd, 345 S.C. 626, 550 S.E.2d 304 (2001), the South Carolina Court of Appeals found that "a one sentence paragraph" in an appellant's brief was insufficient to preserve an issue for appeal. See also Muir v. C.R. Bard, Inc., 336 S.C. 266, 298, 519 S.E.2d 583, 600 (Ct. App. 1999) (Deeming an appellant's arguments abandoned because they were "so conclusory").

Here, Appellants abandoned any issue about the Restrictive Covenants in their appeal of the Commission's decision to the Circuit Court. Appellants' Notice of Appeal to the Circuit Court was short, conclusory, and did not expressly reference any issue about the Restrictive Covenants. Notice of Appeal to Circuit Court, at ¶¶ 3-5. It simply alleged that the Commission made no "written decision," the Commission's "verbal decision" is "not supported by the evidence," and the Commission "did not consider certain factors outlined in the Code of Ordinances for Aiken County." Id. Appellants submitted no brief in support of their appeal with the Circuit Court. Furthermore, at the October 16, 2023, hearing before the Circuit Court, Appellants' argument exclusively focused on whether the Circuit Court should have issued a written memorandum outlining factual findings and its reasons for approving Verizon's application and whether the proposed cell tower is in accord with Aiken County's Land Management Regulations. Oct. 16, 2023, Hearing Transcript, at 5-10 (Never articulating any issue about the Restrictive Covenants). In fact, Appellants never referenced the Restrictive Covenants until the Circuit Court specifically questioned if Appellants were "complaining" about them. Even then, in response, Appellants baldly stated – ***in a conclusory fashion with no legal support*** – that they "surely think the restrictive covenants are still a viable issue in this case as we take the position this borders - - is actually in the Bluffwood East's development." Id. at 23:23-24:16. See also id. at 29:6-30:2

(Stating Appellants didn't "want to get too - - too much in the weeds on this restrictive covenant issue"). In short, on appeal with the Circuit Court, Appellants cited no case law, authority, or evidence to support any argument about the Restrictive Covenants.

Thus, the Circuit Court concluded that Appellants had "forfeited" any argument that the Restrictive Covenants are applicable to the Indian Trail Property and therefore that issue was "not properly before" it on appeal. Order, at p. 7. In doing so, the Circuit Court emphasized that Appellants, at the October 16, 2023, hearing before it, did not "provide arguments or supporting authority for their position [about the Restrictive Covenants] even after Verizon argued extensively that the restrictive covenants do not apply at the hearing." Id. Thus, it deemed the Restrictive Covenants issue "abandoned." Id. Such a finding was within the province of the Circuit Court and in accord with South Carolina law, and the Court of Appeals should not permit Appellants to revive an already abandoned issue. See Glasscock, at 81, 557 S.E.2d at 691.

Moreover, even if Appellants had not abandoned the issue during appeal to the Circuit Court, they have abandoned it in this second appeal to the Court of Appeals. With regard to the Restrictive Covenants, Appellants' Initial Brief only includes naked assertions. It states:

- "The Appellants also contend that the Waters' property, where the Cell Tower is to be located, is also part of Bluffwood East and is governed by those covenants." Appellants' Initial Brief, at p. 2;
- A preliminary, unrecorded plat, referred to as "Plat A," shows the Indian Trail Property as a "Lot 34" of Bluffwood East, id., at p. 3;
- "[T]he clear terms of the Restrictive Covenants for Bluffwood East prohibit" the cell tower, id., at p. 11.

Under South Carolina law, Appellants' reliance on very brief, conclusory statements that the Restrictive Covenants apply to the Indian Trail Property and their total failure to "cite any case law," authority, or evidence to support any appellate issue about the Restrictive Covenants is fatal. Similar to the Circuit Court, the Court of Appeals therefore should deem any issue about the

Restrictive Covenants abandoned on appeal. Bennett v. Invs. Title Ins. Co., 370 S.C. 578, 599, 635 S.E.2d 649, 660 (Ct. App. 2006) ("Appellants fail to cite any case law for this proposition and make only conclusory arguments in support thereof. Thus, Appellants abandoned this issue on appeal").

2. Nonetheless, the Evidence in the Record Supports That the Restrictive Covenants Do Not Apply to the Indian Trail Property or Prohibit the Cell Tower.

Even if Appellants had not abandoned the issue of the Restrictive Covenants on appeal, evidence in the record and South Carolina law support that the Restrictive Covenants do not apply to the Indian Trail Property or prohibit the proposed cell tower on that land.

South Carolina "recognizes a historical disfavor for restrictive covenants based upon the view that the best interests of society are advanced by the free and unrestricted use of land." Charping v. J.P. Scurry & Co., 296 S.C. 312, 314, 372 S.E.2d 120, 121 (Ct. App. 1988). Thus, under South Carolina law, "[a] restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property." Kinard v. Richardson, 407 S.C. 247, 257–58, 754 S.E.2d 888, 894 (Ct. App. 2014). See also Buffington v. T.O.E. Enterprises, 383 S.C. 388, 392, 680 S.E.2d 289, 291 (2009) (Noting that "courts tend to strictly interpret restrictive covenants, and to enforce a restrictive covenant, a party must show that the restriction applies to the property either by the covenant's express language or by a plain and unmistakable implication"). Additionally, it is the burden of the party seeking to enforce the alleged restrictions to show that the covenants apply. Charping, at 314, 372 S.E.2d at 121.

Appellants do not meet that burden. They can point to no "express terms" – in a deed or otherwise - or any "plain and unmistakable implication" that the Restrictive Covenants apply to the Indian Trail Property. That is underscored by the following undisputed facts:

- Waters created the Restrictive Covenants on October 7, 2004. See ROA, at Ex. 8, at pp. 53-54. That date is reflected on the last page of the Covenants:

> Date
>
> October 7, 2004

Id., at Ex. 8, at p. 54.

- The Restrictive Covenants provide, in part:

> The property described herein is specifically made subject to the following Restrictive Covenants.
>
> 1. Grantor intends that this property and other nearby property owned by the Grantor, shall be known as Bluffwood East.

Id., at p. 53.

- At the time Waters created the Restrictive Covenants in October 2004, he did not yet own the Waters Parcel (which he later subdivided into Appellants' Property and the Indian Trail Property). Id., at Ex. 8, at pp. 45-50 (Waters Parcel Deed). Thus, the Waters Parcel did not constitute "other nearby property owned by the Grantor" at the time of the Restrictive Covenants' creation.

- On January 23, 2006, Waters purchased the Waters Parcel. Id. The Waters Parcel Deed does not expressly reference or implicate any restrictive covenants that apply to the land. Id.

- Nearly four years later, in March 2010, Waters subdivided the Waters Parcel, selling a portion of it to Appellants. Appellants' Deed for that property, by its express terms, subjects Appellants' Property to the Restrictive Covenants Waters created in 2004. Appellants' Deed plainly states:

> This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats as well as those Restrictive Covenants for Bluffwood East set forth on Exhibit A attached hereto and incorporated herein.

ROA, at Ex. 8, at pp. 51-56 (Appellants' Deed). Appellants' Deed attaches the Restrictive Covenants to it as Exhibit A. Id., at Ex. 8, at pp. 53-54.

- Four years after the sale of land to Appellants, Waters, in March 2014, conveyed the remainder of the Waters Parcel (the Indian Trail Property) to the Waters Trust. Id., at Ex. 8, at pp. 57-61 (Indian Trail Property Deed).

> In contrast to Appellants' Deed, the Indian Trail Property Deed contains no express language incorporating, referencing, or implicating the Restrictive Covenants (or any other restrictive covenants). It also does not attach the Restrictive Covenants as an exhibit. Id.

It is significant that the Indian Trail Property Deed – neither by express terms nor by plain implication – references or applies the Restrictive Covenants to the real estate. At the time of that Deed's creation, the Restrictive Covenants had long existed. Moreover, Waters clearly knew how to apply the Restrictive Covenants to land, as he did to Appellants' Property by: (a) including express language in Appellants' Deed subjecting that property to the Restrictive Covenants and (b) attaching the Restrictive Covenants to Appellants' Deed. However, he chose not to do so for the Indian Trail Property, neither applying the Restrictive Covenants via express terms in the Indian Trail Property Deed nor attaching the Covenants to that Deed. See, e.g. Taylor v. Lindsey, 332 S.C. 1, 5, 498 S.E.2d 862, 864 (1998) (Noting that "if the grantor had wanted to restrict mobile homes, he could have done so").

In Santoro v. Schulthess, 384 S.C. 250, 681 S.E.2d 897 (Ct. App. 2009), the South Carolina Court of Appeals evaluated a similar situation, assessing whether a grantor intended to apply restrictive covenants to multiple parcels of property he conveyed. In that case, a deed conveyed four separate properties, but only *one* property's description stated that the "conveyance [was] made subject to restrictive covenants and conditions." Id., at 272-73, 681 S.E.2d at 908. The Court of Appeals thus found that only that *one* property was subject to the restrictive covenants. It emphasized that "the language of the deed in question makes only one of its four conveyances subject to the subdivision's restrictive covenants," and that, if the grantor had intended to make all four properties subject to the covenants, he knew how to employ and could have utilized restrictive language for each property's description (but he did not do so). Id., at 273, 681 S.E.2d at 909.

As in Santoro, Waters only subjected Appellants' Property to the Restrictive Deeds. He included no express language in the Indian Trail Property Deed or any other evidence that he, as grantor, unmistakably intended for the Indian Trail Property to be subject to the Restrictive Covenants. See, e.g. Kinard, at 258, 754 S.E.2d at 894 (In "construing a deed, the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy. In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law. The intention of the grantor must be found within the four corners of the deed"). See also Snow v. Smith, 416 S.C. 72, 88, 784 S.E.2d 242, 250 (Ct. App. 2016) ("The court is without authority to consider parties' secret intentions, and therefore words cannot be read into a contract to impart an intent unexpressed when the contract was executed").

Notably, Appellants' reliance on an August 18, 2004, preliminary plat of Bluffwood East[9] ("**Preliminary Plat A**") is unwarranted as that plat is preliminary, unrecorded, does not reference

[9] Similarly, Appellants' Rule 60 Motion regarding an August 18, 2004, preliminary plat "B" of Bluffwood East ("**Preliminary Plat B**"), which is not part of the record on appeal before this Court and which Appellants recently "discovered," is baseless. As outlined in Verizon's Return to that Motion, which Verizon incorporates herein, Preliminary Plat B is not material to any issue on appeal, entry of it into evidence would not be outcome changing, and it would constitute cumulative evidence Appellants already presented to the Commission about the Restrictive Covenants applicability to the Indian Trail Property.

Of note, Preliminary Plat B does not in express terms or by plain and unmistakable implication evidence any restriction on the use of the Indian Trail Property. In fact:

- Preliminary Plat B does not even depict the Indian Trail Property. Appellants' Motion, at ¶ 7.
- Per its title, Preliminary Plat B is *preliminary*.
- Preliminary Plat B is not recorded in the Aiken County Register of Deeds Office.

the Restrictive Covenants, and does not by express terms or by plain and unmistakable implication restrict the use of the Indian Trail Property. ROA, at Ex. 14 (Preliminary Plat); see also id., at Ex. 7, at 32-34. The preliminary plat's irrelevance is highlighted by the fact that the Restrictive Covenants, which Waters created in October of 2004 (and after the date of the preliminary plat), do not attach, reference, or incorporate the plat. Compare ROA, at Ex. 14 (Preliminary Plat) and id., at Ex. 8, at pp. 53-54 (Providing that only property "described herein" the Restrictive Covenants are subject to those covenants). The plat's immateriality also is underscored by its own inconsistencies, including the labeling of multiple areas as "Lot 34" and "Lot 35," and its failure to identify Appellants' Property as a lot within Bluffwood East (which Appellants contend their Property is a part of). ROA, at Ex. 14.

- The purpose of Preliminary Plat B is unknown. There is no evidence regarding whether Preliminary Plat B was simply a draft or if it ultimately became a final (but unrecorded) version.

- Moreover, Preliminary Plat B in no way references the Restrictive Covenants or denotes explicitly or implicitly that any "lots" depicted on it are subject to the Restrictive Covenants.

- The Restrictive Covenants, which are dated October 7, 2004, did not exist at the time of the August 18, 2004, creation of Preliminary Plat B. Id., at Ex. B; ROA, at Ex. 8, at pp. 53-54.

- When created, the Restrictive Covenants did not incorporate, refer to, or attach Preliminary Plat B (or any unrecorded plat for that matter). ROA, at Ex. 8, at pp. 53-54.

- During the 2004 time period (when Preliminary Plat B and the Restrictive Covenants came into being), Waters did not own (and thus could not restrain the use of) the Indian Trail Property (which he subsequently purchased in 2006). Id., at Ex. 8, at pp. 45-50.

Based on this, it simply is not plausible that Preliminary Plat B could somehow render the Indian Trail Property – expressly or by clear implication - subject to the Restrictive Covenants.

In sum, in light of the evidence in the record, and because South Carolina law resolves all doubts about restrictions "in favor of free use of the property," this Court should conclude – as the Commission and the Circuit Court did – that the Restrictive Covenants are inapplicable to the Indian Trail Property and thus do not prohibit a cell tower on that property or warrant reversal of the Commission's approval of Verizon's application.

3. The Cell Tower Does Not Violate Aiken County Land Management Regulation § 24-3.5.2.

Likewise, the evidence supports that the proposed cell tower is not "inconsistent with" any "mandates set forth in the Aiken County Ordinance" § 24-3.5.2. First, as explained above, Aiken County's Land Management Regulation § 24-3.5.2 sets forth no "mandates." Rather, it outlines Aiken County's "overall policy and desired goals for permits for wireless telecommunications facilities." Aiken County LMR § 24-3.5.2. A policy and "desired goals" are not equivalent to a "mandate" or a requirement that the Commission deny an application for a cell tower that does not satisfy such policy or goals. In fact, Aiken County's Land Management Regulations specifically provide, in LMR § 24-3.5.7, the circumstances under which the Commission may reject a cell tower application, and the Commission found that none of those circumstances existed with regard to Verizon's application. See ROA, at Ex. 2, at pp. 45-47 (Staff Report); id., at Ex. 9, at p. 4 (Voting to approve Verizon's application "based on information received," which includes the Staff Report).

Second, Appellants concern over one of § 24-3.4.2's goals – a goal of "[r]egulating the location of wireless telecommunications facilities in such a manner as to minimize adverse, aesthetic and visual impacts on the land, property, buildings, and other facilities located in the area of wireless telecommunications facilities" – is much ado about nothing. Although they contend the proposed cell tower is inconsistent with Bluffwood East's "environmental features and nature

and character," Appellants' Initial Brief, at p. 11, there is no evidence in the record to support that. To the contrary, the evidence in the record reflects that the proposed cell tower will be located on a small portion of a rural, wooded parcel of land that is located a substantial distance away from Appellants' Property. ROA, at Ex. 2, at p. 65; Order, at n. 1 and n. 2. Thus, the proposed cell tower is likely to have a minimal (*if any*) adverse, aesthetic, or visual impact on Appellants' land or Bluffwood East. Thus, the Commission was well within its discretion to consider Appellants' aesthetic concern and decide that it was outweighed by the wooded nature of the Indian Trial Property and the distance between the tower and Appellants' Property. See Order, at p. 6 (Recognizing that if there is a concern that a proposed cell tower does not meet one of 24-3.5.2's goals, "that concern alone, even if true" is not enough to overturn approval of the application). Notably, even if this Court disagrees with that decision, it should "not substitute [its] judgment for that of" the Commission. Grays Hill, at 637, 850 S.E.2d at 33.

CONCLUSION

The Circuit Court correctly held that: (1) the Commission satisfied its legal obligation to keep a record of its decision to grant Verizon's application for the proposed cell tower, and (2) evidence in that record supports the Commission's decision to grant Verizon's application and the Commission thus did not abuse its discretion in making that decision. Therefore, Verizon respectfully requests that the Court deny Appellants' appeal.

Respectfully submitted,

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November 20, 2024

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
The Honorable Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2024-000659

David L. Lambert and Julia H. Beamish, ……... Appellants,

v.

Aiken County Planning Commission, Aiken County Government, Pyramid Network Solutions for Verizon Wireless, …….. Respondents.

PROOF OF SERVICE

I certify I have served Verizon Wireless' Initial Brief upon counsel for the Appellants Clark W. McCants, IV, Esquire and Clark W. McCants, III, Esquire, by electronic mail via the email address on record with AIS, at Clarkemccants4@gmail.com and Mccants3rd@aol.com, and Bradley T. Farrar, Esquire, by electronic mail via the email address on record with AIS, at bfarrar@aikencountysc.gov, on November 20, 2024.

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