THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
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.

INITIAL REPLY BRIEF OF APPELLANTS

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I. THE CIRCUIT COURT ERRED BY NOT REMANDING THIS MATTER TO THE AIKEN COUNTY PLANNING COMMISSION AND REQUIRING THE COMMISSION TO SET FORTH IN WRITING ITS FINDINGS AND DETERMINATIONS.

The Appellants offer this Reply Brief in response to the arguments presented in the Briefs submitted by both the Respondents Aiken County Planning Commission and Aiken County Government, and the Respondent Pyramid Network Solutions for Verizon Wireless.

Both Respondents acknowledge that S.C. Code Ann § 6-29-360(B) (1976), known as the "South Carolina Local Government Comprehensive Planning Enabling Act of 1994", mandates that the Aiken County Planning Commission (the "Commission") "shall keep a record of its resolutions, findings, and determinations, which record must be a public record".

On Page 8 of its Brief the Respondent Aiken County states:

> A written decision, apparently of the kind Appellants believe should be issued, in the manner of a court order, is not required by South Carolina law. Rather, § 6-29-360 requires a local planning commission to "keep a record," not to issue "written decisions."

Beginning at the bottom of Page 16 of its Brief the Respondent Verizon concedes this mandate exists:

> While [S.C. Code Ann. § 6-29-310, *et seq.*] 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 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 fact or its conclusions.

The Appellants have never asked that the Commission issue a formal memorandum or decision in this case. They have asked only that the Commission set forth in writing the findings

and determinations it made as part of its approval for Verizon's application to construct a wireless communications tower next door to their home. The Appellants submit that something in that regard be required, and in order to have allowed the Circuit Court, as well as this Court, to review the appropriateness of the Commission's decision in that regard.

In their Brief for this matter the Appellants argue that there is no specific authority in South Carolina interpreting the statutory obligation set forth in § 6-29-360(B). While both Respondents now acknowledge this fact, they attempt to negate the clear legislative mandate of this statute by comparing it to other statutes pertaining to land management in South Carolina. Despite this attempt the Respondents never explain to this Court why the Commission should not be held to the requirement that it "shall keep a record of its resolutions, findings, and determinations, which record must be a public record".

The Respondents then attempt to show that the Commission met its statutory obligation because the record for this matter contains the results of a staff investigation with respect to Verizon's application to construct the communications tower. In fact, Judge Newman found that the Commission "not only met, but well exceeded" what he characterized as its "modest obligation" under § 62-29-360(B) by virtue of the existence of that staff investigation. (Order of Judge Newman dated December 28, 2023).

There is absolutely no written record of any type in existence and by which the Planning Commission itself set forth its findings and determinations in this case. There is no written document by which the Commission adopted the County staff's investigation or any part of it. There is not even anything in the record for this case showing that the members of the Commission verbally acknowledged or accepted any part of the staff investigation.

This Court simply does not have the benefit of knowing how and why the Commission reached its decision. This Court should have that benefit for two important reasons.

First, the Appellants raise serious questions as to whether construction of the wireless communications tower is prohibited by restrictive covenants which they contend govern the real property where it is proposed to be located.[1] While the staff investigation addresses these questions this Court is unable to tell whether the Commission considered or ignored them.

Secondly, the Appellants contend that the Commission abjectly failed to fulfill its lawful duty - as set forth by an Aiken County Ordinance - to consider certain criteria before allowing the construction of a wireless communications tower where it is proposed to be located. As set forth in that Ordinance the Commission is required to consider the County's "Overall policy and desired goals for permits for wireless telecommunications facilities", as described as follows:

> *In order to ensure that the placement, construction, and modification of wireless telecommunications facilities protect the county's health, safety, public welfare, environmental features, and nature and character of the community*, the county hereby adopts an overall policy with respect to permits for wireless telecommunications facilities for the express purpose of achieving the following goals:
>
> (1)Requiring permits for any new wireless telecommunications facilities, tower, co-location of antennas, or material modification of an existing wireless telecommunications facility.
>
> (2)Implementing an application process for person(s) seeking permits for wireless telecommunications facilities;

[1] Both Respondents continue to argue that this issue has not been preserved for review by this Court. As set forth in their Brief the Appellants submit that this issue is fully embraced in their Notice of Appeal of the Planning Commission's Decision, was fully argued initially on appeal before Judge Newman without objection, and also was made part of their Motion to Alter and / or Amend his Order dated December 28, 2023. (Notice of Appeal dated 2/20/23; Transcript of Hearing for Motion to Alter and/or Amend).

(3)Establishing a policy for examining an application and issuing permits for wireless telecommunications facilities that is both fair and provides consistent disposition.

(4)Promoting and encouraging, wherever possible, the sharing and/or co-location of wireless telecommunications facilities among service providers.

(5)Regulating 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.

(Aiken County Ordinance Section 24-3.5.2)(emphasis added).

The Respondent Commission, as well as the Respondent Aiken County Government, do not acknowledge the existence of this Ordinance in their Brief. The Respondent Verizon treats this Ordinance as meaningless. The Appellants submit that this Court should consider the provisions of this Ordinance as part of its review of this case.

II. THE CIRCUIT COURT ERRED BY NOT CONCLUDING THAT THE EVIDENCE PRESENTED TO THE PLANNING COMMISSION DOES NOT SUPPORT ITS DECISION TO ALLOW CONSTRUCTION OF THE WIRELESS COMMUNICATIONS TOWER.

The Appellants reaffirm the arguments presented in their Appellants' Brief and with respect to the second argument presented above.

CONCLUSION

For the reasons set forth above, as well those reasons set forth in their Appellants' Brief for this case, the Appellants respectfully submit that this Court should remand this matter to the Aiken County Planning Commission and order it reconsider the application submitted by Verizon, and set forth in writing its findings and determinations as to why that application should be denied or granted. Such an order should require the Commission to address whether the

Restrictive Covenants of Bluffwood East apply to the property where the cell tower is to be located, and to also consider the mandate set forth in Section 24-3.5.2 of the Aiken County Ordinance as set forth above.

In the event that this Court finds that the Planning Commission adequately explained its decision to grant the application the Appellants respectfully submit that the evidence contained in the record for this case does not support the Commission's decision in that regard, and it should be reversed in its entirety.

Respectfully Submitted,

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Dated: January 17, 2025

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The Honorable Clifton B. Newman, Circuit Judge

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Respondents.

PROOF OF SERVICE

I certify I have served the Appellants' Initial Reply Brief upon counsel for the Respondents, Catherine Wrenn, Esquire, by electronic mail via the email address on record with AIS, at cwrenn@bakerdonelson.com, and Bradley T. Farrar, Esquire, by electronic mail via the email address on record with AIS, at bfarrar@aikencountysc.gov, on January 17, 2025.

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