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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
Case No. 2023-CP-02-00412

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

v.

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

BRIEF OF RESPONDENTS AIKEN COUNTY PLANNING COMMISSION AND AIKEN COUNTY GOVERNMENT

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STATEMENT OF THE CASE

Appellants commenced their action by electronically filing a Notice of Appeal with the Court on February 20, 2023. They appeal the decision of Respondent Aiken County Planning Commission to approve an application made by Respondent Pyramid Network Services, LLC, for Verizon Wireless to place a telecommunications tower ("Application") on property known as Old 96 Indian Trail, Wagener, South Carolina 29164, bearing Aiken County Tax Parcel Number 262-00-01-002 ("Indian Trail Property").

The Indian Trail Property is owned by Gerald L. Waters, Trustee of the Gerald L. Waters Living Trust, and consists of more than one hundred (100) acres of vacant, unimproved wooded land. It is zoned for rural development. Respondent Verizon Wireless leases or intends to lease a portion of the Indian Trail Property for the purpose of building and operating a cell tower.

Appellants own property known as the "Bluffwood Road Property," bearing Aiken County tax map parcel number 262-00-01-043, adjacent to the Indian Trail Property. As the trial court noted, the proposed location of the cell tower on the Indian Trail Property is approximately one thousand-six hundred (1,600) feet away from the Appellants' property line (R. 1).

The Application proceeded to the Planning Commission for a public hearing on October 20, 2022. At the hearing, Appellant Lambert advised the Planning Commission that the placement of a telecommunications tower violated restrictive covenants he contended applied to the proposed tower site.

S.C.Code Ann. § 6-29-1145 provides in relevant part:

> (B) If a local planning agency has actual notice of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity:
>
> (1) in the application for the permit;

(2) from materials or information submitted by the person or persons requesting the permit; or

(3) from any other source including, but not limited to, other property holders, the local planning agency must not issue the permit unless the local planning agency receives confirmation from the applicant that the restrictive covenant has been released for the tract or parcel of land by action of the appropriate authority or property holders or by court order. (Emphasis supplied herein).

Based on Appellant Lambert's representation to the Planning Commission regarding restrictive covenants that may be relevant to this Application, the Commission tabled the matter until its next regular meeting scheduled for November 17, 2022.

At its meeting on November 17, 2022, in addition to the Staff Report on the Application, the Planning Commission included in the record of this case the following:

1) Letter of November 17, 2022, from Clarke W. McCants III, Esquire (R. 254);

2) E-mail of November 15, 2022, From Nick Steinhaus, Esquire (R. 255);

3) Limited Warranty Deed recorded on January 27, 2006, in Deed Book RB 4042, Pages 1955-1960, in the Office of the Register of Mesne Conveyance for Aiken County (R. 259);

4) Title to Real Estate recorded on March 30, 2010, in Deed Book RB 4301, Pages 1238-1243, in the Office of the Register of Mesne Conveyance for Aiken County (R. 265);

5) Title to Real Estate recorded on March 26, 2014, in Deed Book RB 4499, Pages 2015-2019, in the Office of the Register of Mesne Conveyance for Aiken County (R. 65, 75).

In addition, at the November 17, 2022, meeting counsel for the Appellants offered a copy of Restrictive Covenants For Bluffwood East for the Commission's consideration (R. 267).

The Planning Commission continued this matter until its meeting in January 2023.[1]

[1] Counsel for Respondent Aiken County Planning Commission was on overseas military duty during the regularly scheduled Planning Commission for December 2022, and, therefore, the Commission continued the matter from its November 17, 2022, meeting until its meeting held on January 19, 2023.

Following the Planning Commission's November 17, 2022, meeting, counsel for the Commission sent a letter dated November 21, 2022, to counsel for the Appellants and to counsel for Respondent Pyramid Network Solutions, LLC for Verizon Wireless (R. 252), advising in relevant part as to the restrictive covenant issue pursuant to § 6-29-1145:

> Importantly, Subsection (C) provides in relevant part:
>
> As used in this section:
>
> (1) "actual notice" is not constructive notice of documents filed in local offices concerning the property, and does not require the local planning agency to conduct searches in any records offices for filed restrictive covenants; (Emphasis supplied herein).
>
> In accordance with 6-29-1145(C)(1), you are encouraged to submit any relevant documents or exhibits you believe bear upon the facts of this request, preferably prior to the call of this matter so that they may be included in the agenda packet, as the Aiken County Planning Department is not required to search for any documents, whether recorded or not, that relate to restrictive covenants and it does not represent either the applicant or anyone in opposition to a matter that comes before the Planning Commission.

At its regularly scheduled meeting held on January 19, 2023, the Planning Commission approved the Application.

Other than in the Notice of Appeal caption, there is no mention of Respondent Aiken County Government, and there is no allegation of any error at law or in equity on the part of Respondent Aiken County Government in the record.[2]

[2] In its Return to Notice of Appeal, Respondents noted that Aiken County Government is not a proper party to this appeal and should be dismissed therefrom. First, there is no legal entity known as "Aiken County Government." Second, only the Aiken County Planning Commission considered the Application and made a decision on its disposition. No one other than members of the Planning Commission participated in this matter, and the Planning Commission is a distinct legal entity from which appeals, such as this one, may be taken without the need to name any other entity responsible for the decision relative to the Application subject to this appeal.

Despite Appellant Lambert having raised to the Planning Commission the issue of restrictive covenants as prohibiting the Application, there is no mention in the Notice of Appeal to the Circuit Court of restrictive covenants.

Respondents Aiken County Planning Commission and Aiken County Government filed their Return to Notice of Appeal with the Court on March 15, 2023.

As part of the Notice of Appeal, the Appellants requested pre-litigation mediation pursuant to S.C.Code Ann. § 6-29-1155. Mediation was held on August 30, 2023, and an impasse declared therefrom as reflected in the Proof of ADR filed with the Court on September 12, 2023.

Respondent Verizon Wireless filed its Memorandum in Opposition to Appellants' Appeal of Aiken County Planning Commission's Approval of Application for Cell Tower with the Court on October 11, 2023.

A hearing on Appellants' appeal was held by the Circuit Court on October 16, 2023. The trial court reviewed the Planning Commission's decision to approve Verizon's Application for an abuse of discretion, and found none. *Grays Hill Baptist v. Beaufort Cnty.*, 431 S.C. 630, 637, 850 S.E.2d 29, 33 (2020). Similar deference is given to a companion planning and zoning entity, a local board of appeals. *See, e.g., Bishop v. Hightower,* 292 S.C. 358, 356 S.E.2d 420 (Ct. App. 1987), with the Court holding:

> The Zoning Board's findings of fact are final and conclusive on appeal. Appeal to the circuit court is only for a determination of whether the Board's decision is correct as a matter of law. S.C. Code Ann. § 6-7-780 (1976). Further appeal to the Supreme Court is in the same manner as appeals from other circuit court judgments in law cases. S.C. Code Ann. 6-7-790 (1976). On appeal, the Zoning Board's decision should not be interfered with "unless it is arbitrary or clearly erroneous." *Ex parte LaQuinta Motor Inns, Inc.*, 279 S.C. 598, 310 S.E. (2d) 438, 439 (Ct. App. 1983).

The trial court issued its Order Denying Appeal on December 27, 2023, filed on December 28, 2023.

On January 8, 2024, Appellants filed their Notice of Motion and Motion to Alter And/Or Amend the Order Denying Appeal.

The Court issued its Order Denying Motion to Alter And/Or Amend on March 19, 2024, filed March 20, 2024. No further post-trial motions were filed. This appeal followed.

STANDARD OF REVIEW

The standard of review from a case tried by a judge in an action at law is that, "the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." *Townes Associates, Ltd. v. City of Greenville,* 266 S.C. 81, 221 S.E.2d 773 (1976); *Alexander's Land Co., L.L.C. v. M & M & K Corp.,* 390 S.C. 582, 703 S.E.2d 207 (2010); *Auto Owners Ins. Co. v. Rollinson,* 378 S.C. 600, 663 S.E.2d 484 (2008). Thus, the trial judge's findings are treated in the same manner as a jury's findings in an action at law tried before a jury. *Townes Assocs.,* 266 S.C. 81, 221 S.E.2d 773; *see also Moseley v. All Things Possible, Inc.,* 395 S.C. 492, 719 S.E.2d 656 (2011).

ARGUMENTS

I. The trial court correctly ruled that the Planning Commission compiled a sufficient record of its decision to approve Verizon's tower application pursuant to S.C.Code Ann. § 6-29-360.

The Appellants concede that, "[v]erbal notice of the granting of (Verizon's) application was made by the Aiken County Planning Commission at its meeting held on January 19, 2023." (R. 12). However, they allege that, "[u]pon information and belief, no written decision granting the application has been issued by the Planning Commission." (R. 12).

S.C.Code Ann. § 6-29-360(B) provides:

> The commission shall adopt rules of organizational procedure and shall keep a record of its resolutions, findings, and determinations, which record must be a public record. The planning commission may purchase equipment and supplies and may employ or contract for such staff and such experts as it considers necessary and consistent with funds appropriated. (Emphasis supplied herein).

Local planning commissions are citizen volunteer bodies that meet as needed, generally no more frequently than once a month. Local government planning, zoning, or development staff (permanent personnel) typically provide administrative support to planning commissions and boards of zoning appeal,[3] helping in the preparation and printing of meeting agendas, posting properties to provide public notice of matters and appeals coming before such bodies, and the like, keeping records of decisions and the like. Planning Commissions typically do not have physical "offices," and, as such, are not generally the custodians of the public records in which their actions are memorialized. Rather, local planning, zoning, or development offices generally create and retain public records for planning commissions and boards of appeal.

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[3] *See, e.g.*, S.C.Code Ann. §§ 6-29-780, -790, and -800.

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."

Contrast this with the form and level of memorialization required of a local board of appeals pursuant to S.C.Code Ann. § 6-29-800(F):

> All final decisions and orders of the board must be in writing and be permanently filed in the office of the board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board which must be delivered to parties of interest by certified mail. (Emphasis supplied herein).

No such written decision is required of a local planning commission. Notwithstanding the absence of a requirement to issue a written decision, in addition to the actual notice of the decision that Appellants acknowledged was given to them in person at the conclusion of the Planning Commission's hearing of this Application, on January 25, 2023, Aiken County Planning and Development staff sent a copy of the Commission's "findings and determinations," pursuant to § 6-29-360, to the Applicant, noting in great detail:

> Section 24-3.5.16(2), "Action on an Application for a Permit for Wireless Telecommunications Facilities," of the Aiken County Land Management Regulations (LMR) states, "(i)f the Planning 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, and the permit shall be issued within thirty (30) days after all conditions of such approval is (sic) met. Except for necessary Building Permits and subsequent Certificates of Occupancy, once a permit has been granted hereunder, no additional permits or approvals from the County shall be required by the County for the wireless telecommunications facility covered by the permit." In accordance with the ordinance, this letter is to inform you of the decision of the Aiken County Planning Commission. The application was approved with contingencies by a majority, at the January 19, 2023 meeting of the Aiken County Planning Commission. When contingencies are met, the LMR permit for the site will be issued and then the project

> may proceed with applying for a Building Permit... (Emphasis supplied herein). (R. 22, 96).

As the Appellants are not the Applicant, they would not have been mailed a copy of this written decision of Respondent Aiken County Planning Commission unless they had requested a copy of it. However, the January 25, 2023, letter is a public record, and the Appellants and anyone else would have been provided with a copy of that decision upon request, with or without the need to seek a copy under the South Carolina Freedom of Information Act.

In *Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals,* 342 S.C. 480, 536 S.E.2d 892 (S.C.App. 2000), the Court held with respect to legacy board procedures as well as to current requirements:

> Both the old and new statutory schemes require a zoning board's decision to be in writing and contain separate findings of fact and conclusions of law. Compare S.C. Code Ann. § 6-7-740 (1977), with S.C. Code Ann. § 6-29-800 (Supp. 1999). Neither statutory scheme specifies the form the writing must take; however, the South Carolina Administrative Procedures Act recognizes both written documents and records of proceedings as appropriate formats for final decisions in contested cases. S.C. Code Ann. § 1-23-350 (Supp. 1999). Generally, the format of a final decision is immaterial as long as the substance of the decision is sufficiently detailed so as to allow a reviewing court to determine if the decision is supported by the facts of the case. *Able Communications, Inc. v. South Carolina Pub. Serv. Comm'n.,* 290 S.C. 409, 351 S.E.2d 151 (1986); *Cloyd v. Mabry,* 295 S.C. 86, 367 S.E.2d 171 (Ct. App. 1988); cf. *Ross v. Medical Univ. of South Carolina,* 328 S.C. 51, 65, 492 S.E.2d 62, 70 n.6 (1997) (allowing a committee's report to fulfill the "findings of fact and conclusions of law" requirement of § 1-23-350 where the letter announcing the committee's decision did not meet the requirement). (Emphasis supplied herein).

Similarly, in *Wyndham Enterprises, LLC v. City of North Augusta,* 401 S.C. 144, 735 S.E.2d 659 (S.C.App. 2012), the Court held:

> The minutes normally constitute the BZA's final findings. S.C. Code Ann. § 6-29-800(F) ("All final decisions and orders of the board must be in writing and be permanently filed in the office of the board

> as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board which must be delivered to parties of interest by certified mail."). But the transcript can constitute the final findings if the minutes are found invalid. *See Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals,* 342 S.C. 480, 493-94, 536 S.E.2d 892, 899 (Ct. App. 2000). (Emphasis supplied herein).

In *Austin v. Board of Zoning Appeals, Town of Hilton Head,* 362 S.C. 29, 606 S.E.2d 209, the Court held:

> Though the statute does not specify the form the writing must take, it is well-settled that courts reviewing the decisions of zoning boards and other administrative agencies may look to written documents as well as records of proceedings as sufficient formats for final decisions. For example, in Vulcan Materials Co. v. Greenville County Board of Zoning Appeals, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000), this court upheld a circuit court finding that a transcript of a zoning board hearing constituted a sufficient final written decision. On the question of whether the transcript alone could satisfy the statutory requirement of a written decision, the court opined that "[g]enerally, the format of a final decision is immaterial as long as the substance of the decision is sufficiently detailed so as to allow a reviewing court to determine if the decision is supported by the facts of the case." Id. at 494, 536 S.E.2d at 899; (Emphasis supplied herein).

Perhaps most striking in regard to the Court's emphasis on substance over form in local board decisions is its finding in *Venture Engineering for DT LLC, Respondent v. Horry County Zoning Board of Appeals,* 433 S.C. 419, 858 s.E.2d 638 (S.C.App. 2021):

> **Although the Board's written order failed to set forth any reasoning**, the hearing transcript and the Board's minutes indicate the Board's decision was supported by the testimony of residents in the surrounding community expressing concerns about particulates, noise, and traffic.10 Additionally, the Board's minutes recount a Board member's statement that the Board "had concerns with the nuisance, airborne particulates[,] and the traffic from the heavy trucks." Therefore, the neighbors' testimony likely persuaded the Board to conclude that the requested variances would be a "substantial detriment" to surrounding residences and would harm the surrounding community's character. (Emphasis supplied herein).

All of the foregoing cases deal with boards of appeal, zoning entities that have an express requirement under § 6-29-800(F) that, "[a]ll final decisions and orders of the board must be in writing and be permanently filed in the office of the board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board which must be delivered to parties of interest by certified mail." Again, no such requirement exists for planning commissions.

The voluminous 299-page Record on Appeal to the Circuit Court constitutes one of the most exhaustive considerations a local planning commission could give to a single application, and includes exhibits introduced over three months of Respondent's regular meetings, to wit:

(1) January 25, 2023, Letter to Mr. Lannie Greene, Pyramid Network Services from Aiken County Planning Commission (R. 22, 96);

(2) October 20, 2022, Aiken County Planning Commission Agenda (R. 97);

(3) October 20, 2022, Aiken County Planning Commission Meeting Minutes (R. 131);

(4) Transcript from October 20, 2022, Aiken County Planning Commission Meeting (R. 140);

(5) November 17, 2022, Aiken County Planning Commission Agenda (R. 159);

(6) November 17, 2022, Aiken County Planning Commission Meeting Minutes (R. 196);

(7) Transcript from November 17, 2022, Aiken County Planning Commission Meeting (R. 202);

(8) January 19, 2023, Aiken County Planning Commission Agenda (R. 244);

(9) January 19, 2023, Aiken County Planning Commission Meeting Minutes (R. 303);

(10) Transcript from January 19, 2023, Aiken County Planning Commission Meeting (R. 308);

(11) November 21, 2022, Letter from Bradley T. Farrar to Clark W. McCants, III, Esq., and Nick Steinhaus, Esq. (R. 252);

(12) Verizon Site Plans (R. 110, 172, 280, 340, 400);

(13) Restrictive Covenants (R. 393);

(14) Preliminary Plat of Bluffwood Estate (R. 395); and

(15) Geographical Information System (GIS) Map from qPublic.net (R. 392).

There is abundant evidence in the record to support Respondent Aiken County Planning Commission's approval of the Application. The trial court correctly found that in reaching its decision, the Planning Commission did not abuse its discretion. *Grays Hill Baptist v. Beaufort Cnty.*, 431 S.C. 630, 637, 850 S.E.2d 29, 33 (2020); *Bishop v. Hightower,* 292 S.C. 358, 356 S.E.2d 420 (Ct. App. 1987); *Ex parte LaQuinta Motor Inns, Inc.*, 279 S.C. 598, 310 S.E. (2d) 438, 439 (Ct. App. 1983).

II. The trial court correctly ruled that the Planning Commission's decision was based on criteria set forth in the Aiken County Land Management Regulations.

Despite the fact that § 6-29-360(B) imposes no requirements as to the "record" of the findings and determinations county planning commissions are to keep, Respondent had before it for consideration numerous written submissions from Aiken County Planning Staff, the applicant, the Appellants and their counsel, input from all interested speakers over three (3) separate meetings, and all of the items set forth in its agenda packets for those meetings. Included among those submissions, and a key part of the record of this case, are the Staff Reports, which provided in part:

> According to Chapter 24, Article 3, Section 5.7(1) of the Aiken County Code of Ordinances, the Planning Commission shall review applications for new telecommunication towers based on four criteria. The criteria and staff comments related to each are provided below. Disapproval from the Planning Commission must be based on substantial evidence in the record and the reasons stated on the record.

a. "Conflict with safety and safety-related codes and requirements." The site has met and/or exceeded County adopted IBC and ANSI codes.

b. "Conflict with a designated historical site."

The site does not conflict with any designated historical site listed with the State Historic Preservation Office.

c. "The placement and location of wireless telecommunications facilities which 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."

Staff is not aware of any unacceptable risk or reasonable probability of such that the placement and location of the wireless telecommunication facility would create to residents, the public, employees, and agents of the County, or employees of the service provider or other service providers.

d. "Conflicts with the provisions of this section 24-3.5."

A list of deficient items is attached and was forwarded to the applicant by email on 9/28/2022.

The telecommunication tower regulations are intended to protect the County's health, safety, public welfare, environmental features, and nature and character of the community. (R. 106).

The Aiken County Planning Staff Report further provided in the "Deficient Items List for Old 96 Indian Trail":

• The Functional Performance Standards and Guaranty need to be completed and submitted.

• Sec. 24-3.5.5 (8, k) "The azimuth, size and center line height location of all proposed and existing antennas on the supporting structure." The center line height has already been shown, that part of this section does not need to be completed.

• Sec. 24-3.5.5 (8, l) A bufferyard plan will need to be submitted.

• Sec. 24-3.5.5 (11) "The applicant shall provide certification from a professional civil or structural engineer licensed in the state that

the telecommunications facility is designed and will be constructed to meet all county, state, and federal structural requirements for loads, including wind and ice loads and including, but not limited to all applicable ANSI (American National Standards Institute) guidelines." The applicant has indicated this item will be submitted prior to permitting.

• Sec. 24-3.5.13 (2) "There shall be no development or construction of habitable (residential) buildings within the fall zone or setback area set forth in the immediately preceding section 24-3.5.13.1. The applicant shall provide written proof that the owner of property on which a tower is proposed to be erected has been notified of this limiting provision regarding habitable (residential) buildings. Such proof of notification of this limiting provision shall be in the form of a written and properly executed agreement between the applicant and the owner of the property, or in other form which is approved by the planning and development director." Letter from the property owner will need to be submitted.

• Engineer shown on CDs is licensed by the State of Alabama, per ordinance, engineers must be licensed by the State of South Carolina. (R. 108).

The Planning Commission had before it all of those items set forth in the Staff Reports, including the Aiken County Code of Ordinance requirements for telecommunications towers, in addition to all of the documents and exhibits offered by the Appellants and by anyone else interested in this case available to it for its consideration, and devoted substantial time and took extensive testimony from all interested speakers before voting to approve the Application.

The Commission also heard witness testimony regarding restrictive covenants (R. 149-150, 153-157, 203-205, 216-218, 221-222, 224-225, 228-230, 236-237, and 239-242), setback requirements (R. 143-144, 148, 213), cell tower fall zones (R. 213-214), Verizon's attempts to co-locate on a tower rather than construct a new tower (R. 143, 216), the completeness of its Application (R. 145, 211, 218, 233), the authority of the landowner intending to lease the subject property to the Applicant (R. 210, 216, 238), zoning classification of the property (R. 141, 203), the proposed cell tower's height (R. 141), any outstanding items relative to the Application (R.

142, 211), the need for cell phone coverage in the area (R. 143, 238), "functional performance standards" (R. 145), engineer qualifications (R. 148), and compliance with the Aiken County Land Management Regulations (R. 210).

The Planning Commission's decision is supported by the record of this case, under circumstances where State law imposes no requirements as to the type, form, or detail of the record a planning commission is to keep. S.C.Code Ann. § 6-29-360. Thus, trial court affirmed the Planning Commission's decision.

III. The trial court correctly ruled that the Appellants did not properly present or preserve the issue of restrictive covenants, and that even if that issue had been properly presented or preserved, it would fail as a matter of law.

Appellants' Notice of Appeal to Circuit Court contains no mention of restrictive covenants. Nonetheless, and in the spirit of due process and a meaningful opportunity to be heard, the Court heard the Appellants on that issue, concluding that:

> Appellants final argument that the proposed cell tower would violate certain restrictive covenants applicable to the Indian Trail Property is forfeited and fails as a matter of law. Appellants (sic) 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, I find the question of whether restrictive covenants apply to the Indian Trail property and 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).

The Court then gave substantive consideration to the issue of restrictive covenants[4] even though not properly postured:

[4] On October 21, 2024, and contemporaneous with the filing of their Initial Brief, Appellants filed a Notice of Motion an Motion to Introduce Newly Discovered Evidence pursuant to Rule 60(b)(2), SCRCP. That Motion once again pertains to restrictive covenants. Respondents do not address that Motion here, as the alleged newly discovered

Nevertheless, even if the issue were properly presented, I find in the restrictive covenants attached to and referenced in the Bluffwood Road Property Deed (including the covenant prohibiting commercial activity) 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 and deny Appellant's appeal on this ground. See Record Exhibit 13. I further find that no restrictive covenants are attached to or referenced in the Indian Trail Property Deed that would prohibit the construction or operation of the proposed telecommunications tower on the that property. *See Kinard v. Richardson,* 407 S.C. 247, 257-58, 754 S.E.2d 888, 894 (Ct. App. 2014) (quoting *Taylor v. Lindsey,* 332 S.C. 1, 498 S.E.2d 862 (1998) ("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.")); *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"). For the reasons set forth above, Appellants' Appeal of the Aiken County Planning Commission's decision to approve Verizon's Application for a permit for a telecommunications facility is DENIED.

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evidence is not a part of the record of the trial court appealed from in this case. Respondents reserve the right to file a return or a reply to Appellants' Motion apart from the Initial Brief of Respondents.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondents respectfully request that this Court affirm the orders of Circuit Court Judge Clifton B. Newman, denying Appellants' appeal of the Aiken County Planning Commission's decision to approve Verizon's Application for a permit for a telecommunications tower.

Respectfully submitted,

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February 24, 2025

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CERTIFICATE OF COUNSEL

The undersigned counsel for Respondents Aiken County Planning Commission and Aiken County Government certifies that the Final Brief of Respondents Aiken County Planning Commission and Aiken County Government complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court' s Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), the undersigned employee of the Aiken County Attorney's Office does hereby certify that service of the Final Brief of Respondents Aiken County Planning Commission and Aiken County Government in this matter was made upon all counsel of record by U.S. Mail and by email as follows:

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