

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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

v.

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

Appellate Case No. 2024-000659

Appeal From Aiken County
Clifton Newman, Circuit Court Judge

Opinion No. 6165
Heard November 4, 2025 – Filed September 23, 2026

REVERSED AND REMANDED

Clarke Wardlaw McCants, IV, and Clarke W. McCants,
III, both of Nance & McCants of Aiken, for Appellants.

Catherine Farrell Wrenn, of Baker Donelson Bearman
Caldwell & Berkowitz, PC, of Charleston, for
Respondent Pyramid Network Solutions for Verizon
Wireless.

Bradley Truman Farrar, of Aiken, for Respondent Aiken
County Planning Commission and Respondent Aiken
County Government.

MCDONALD, J.: This is an appeal of the circuit court's order affirming the Aiken County Planning Commission's (the Planning Commission) approval of Verizon Wireless's application to construct a cell tower on real property adjacent to Appellants' property. Appellants contend the circuit court erred by failing to remand this matter to the Planning Commission for written findings, in concluding evidence supported the Planning Commission's decision to grant Verizon's application, and in declining to consider certain restrictive covenants arguably barring commercial activity at the proposed location. We reverse and remand to the Planning Commission.

Facts and Procedural History

In November 2003, Gerald Waters purchased property in Aiken County from the Sue G. Howard Family Limited Partnership and others (the Howard tract). On October 7, 2004, Waters executed restrictive covenants for Bluffwood East (the Restrictive Covenants), an equestrian and residential community in Aiken County. The Restrictive Covenants provide:

1. Grantor intends that this property and other nearby property owned by the Grantor, shall be known as Bluffwood East.

. . . .

6. No commercial activity shall be conducted on subject property specifically including, but not limited to, chicken houses, hog farms, or bait farms. The boarding and training of horses is permitted. It will be the responsibility of each owner to contain the animals on their property, and to prevent them from becoming a nuisance to their neighbors.

These recorded covenants also prohibit mobile homes, require that "[a]ll construction shall be of a high quality," and state "[n]o unsightly items may be kept on the property which are visible from the roadway."

On January 23, 2006, Waters purchased a large tract of land from Blue Sky Timber Properties (the Blue Sky tract). This purchase included the Indian Trail Property on which Verizon seeks to place the cell tower.

In March 2010, Waters sold to David Lambert and Julia Beamish (collectively, Appellants), seventeen acres from the Blue Sky tract and another tract Waters owned. The 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."

On March 12, 2014, Waters conveyed three hundred and seventy-five acres, including the Indian Trail Property, to the Gerald Waters Living Trust. The deed reflecting this transfer does not reference the Restrictive Covenants.

On September 19, 2022, Verizon applied for a permit to build a cell tower on the Indian Trail Property. Aiken County Planning and Development Department (the Department) staff then prepared a report for the Planning Commission, stating the proposed site for the cell tower met all county-adopted codes and did not conflict with any designated historical site. The staff report further noted, "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." Regarding compliance with section 24.3.5 of the Aiken County Code of Ordinances, staff reported that the applicant was provided with a list of deficient items. The staff report also stated, "The telecommunication tower regulations are intended to protect the County's health, safety, public welfare, environmental features, and nature and character of the community."

On October 20, 2022, the Planning Commission discussed the Verizon application at its regularly scheduled meeting. David Lambert, an adjacent landowner, informed the Planning Commission that the Restrictive Covenants applicable to the Indian Trail Property prohibited the construction of a cell tower. Lambert explained that the Indian Trail Property was a part of the Bluffwood East equestrian community and that the Restrictive Covenants bar such commercial activity on the Property. The Planning Commission continued the matter until its November meeting.

Following the October meeting, the Aiken County Attorney emailed Lambert and Verizon, inviting them to submit written comments to the Planning Commission regarding the Restrictive Covenants. Verizon replied, asserting the Restrictive Covenants do not apply to the Indian Trail Property because no restrictive covenants were attached to the deed in 2006, when Waters acquired the Property,

or in 2014, when he transferred it to the trust. Counsel for the Lamberts submitted a letter noting his appearance and stating he looked forward to appearing at the Planning Commission's November meeting.

On November 17, 2022, the Planning Commission resumed the hearing on the cell tower permit application. Verizon maintained that the Restrictive Covenants do not apply to the Indian Trail Property. Lambert's counsel appeared and argued the Planning Commission should deny the permit for the cell tower because the Property is subject to Restrictive Covenants prohibiting the construction of a cell tower. Counsel asserted that the Commission should "summarily deny this application on that basis, alone." He further explained,

I will tell you, based on some prior litigation I was involved in, I know for a fact, the entire Bluffwood East development is subject to the restrictions that Mr. Waters placed on it when he developed this property. They are recorded, and I have copies for everybody right here.

Counsel next argued the applicable Aiken County ordinances prohibit construction of the cell tower if such would affect the character of the community, here the Bluffwood East equestrian community. The Planning Commission again voted to continue the matter to gather additional information regarding the Restrictive Covenants.

On November 21, 2022, the Planning Commission asked Verizon and Lambert to submit any documents addressing the restrictive covenants, noting section 6-29-1145 of the South Carolina Code (2004) did not require the Commission to search for such documentation.

On January 19, 2023, the Planning Commission approved Verizon's cell tower application. The minutes of the January 2023 meeting state:

Brad Farrar, Aiken County Attorney, addressed the Commission stating sent [sic] letters to attorneys representing Verizon and the concerned neighbors, citing statute 6-29-1145 which outlines the Planning Commission and Aiken County Planning & Development department response to restrictive covenants. (See attached letter).

Clark McCants, representing David Lambert and Julia Bemish, addressed the Commission stating the entire Bluffwood East subdivision is subject to restrictive covenants. He stated the residences of Bluffwood East are opposed to the construction of a cell tower. Mr. McCants stated that the requirements for the cell tower do not meet Aiken County regulations.

Lannie Greene, with Pyramid Network Services, representing Verizon, addressed the Commission stating Verizon is requesting permission to proceed with the cell tower. He stated that Verizon has provided the documentation requested by Mr. Farrar, and that the subject property meets the Aiken County ordinance for mobile communication towers. He continued stating Verizon's attorney found no restrictive covenants affecting the subject property.

Nick Steinhaus, attorney representing Verizon, addressed the Commission stating after researching, he found no restrictive covenants for the subject property. The restrictive covenants for Bluffwood East were established in 2004, and Mr. Waters purchased this parcel in 2006.

Chairwoman Vance ended the discussion and asked for a motion. Vice-Chairwoman Stewart made a motion to recommend approval based on information received. No second to the motion. There was a discussion with the Commission. 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.

Appellants provided four pages of the transcript from the January meeting in the record, but these pages do not include the Planning Commission's vote or the full discussion of Verizon's application. The end of the last provided page states: "(Incomplete – inaudible.)."

On January 25, 2023, the Department notified Verizon in writing of the Planning Commission's determination. This letter stated:

Section 24-3.5.16 (2) "Action on an Application for a Permit for Wireless Telecommunication 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. If you have any concerns or if I can assist you with anything, please don't hesitate to let me know.

Appellants timely appealed this decision to the circuit court. Following a hearing, the circuit court affirmed the Planning Commission.

The circuit court found the Planning Commission kept a sufficient record of its decision and Appellants had abandoned their argument that the Restrictive Covenants prohibit the proposed cell tower. On the merits, the circuit court found the Restrictive Covenants did not apply because no restrictive covenants prohibiting such use of the Property were attached to or mentioned in the Indian Trail Property deed. The circuit court further found the Planning Commission's decision complied with all applicable regulations and was supported by sufficient evidence because the record showed that "the Commission considered Verizon's

Application, the relevant property records and deeds, the Commission's staff report, and the arguments presented at the hearings."

Appellants filed a Rule 59(e), SCRCP, motion, which the circuit court denied. Appellants timely appealed.¹

Standard of Review

"This Court will not reverse the findings of a county review board unless the board's findings have no evidentiary support or the board has committed an error of law." *Grays Hill Baptist Church v. Beaufort County*, 431 S.C. 630, 637, 850 S.E.2d 29, 33 (2020); *see also Town of Hollywood v. Floyd*, 403 S.C. 466, 476, 744 S.E.2d 161, 166 (2013) ("By statute, the trial court must uphold a decision by the Planning Commission unless there is no evidence to support it."). "[A] decision of the reviewing body will not be disturbed if there is evidence in the record to support its decision." *Grays Hill*, 431 S.C. at 637, 850 S.E.2d at 33.

Law and Analysis

I. Sufficiency of the Planning Commission's Record

Appellants argue the circuit court erred in failing to remand the decision to the Planning Commission for a decision in writing that sets forth its findings and conclusions. We agree with Appellants that the record contains insufficient evidence of the Planning Commission's findings, particularly when the evidence in this record is considered in the context of the controlling statutes and ordinances.

Section 6-29-320 of the South Carolina Code (2004) authorizes county councils to establish county planning commissions. Section 6-29-340 of the South Carolina Code (2004) then delineates the functions, powers, and duties of such planning commissions. These duties include, but are not limited to, the power to "undertake a continuing planning program for the physical, social, and economic growth, development, and redevelopment of the area within its jurisdiction"; "prepare and revise periodically plans and programs for the development and redevelopment of its area"; and "prepare and recommend [ordinances and regulations] for adoption to

¹ On April 19, 2024, Lambert and other surrounding residents filed a separate action in circuit court seeking a declaration that the Restrictive Covenants apply to the subject property.

the appropriate governing authority or authorities as a means for implementing the plans and programs in its area[.]" *Id.*

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.

S.C. Code Ann. § 6-29-360(B) (2004).

Although *Vulcan Materials Co. v. Greenville County Board of Zoning Appeals*, 342 S.C. 480, 494, 536 S.E.2d 892, 899 (Ct. App. 2000) involves the decision of a board of zoning appeals—and not a planning commission—we find it instructive. There, our supreme court noted, "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." *Id.* The supreme court concluded that the circuit court did not err in viewing a meeting transcript as the board's final decision because the "transcript was a writing and contained findings of fact and conclusions of law stated." *Id.* at 495, 536 S.E.2d at 899.

Our courts have also discussed the importance of a reviewing court's ability to review a final decision in the context of appeals from administrative bodies, recognizing, "The findings of fact of an administrative body must be sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence." *Contreras v. St. John's Fire Dist. Comm'n*, 442 S.C. 596, 610, 900 S.E.2d 463, 471 (Ct. App. 2024) (quoting *Parsons v. Georgetown Steel*, 318 S.C. 63, 66, 456 S.E.2d 366, 368 (1995)); see also *Able Commc'ns, Inc. v. S.C. Pub. Serv. Comm'n*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986) ("The findings of fact of an administrative body must be sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings.").

We acknowledge that the statutes governing planning commissions do not specifically require that their findings and conclusions be in writing in the manner of our statutes addressing zoning boards of appeals. See S.C. Code Ann. § 6-29-830(A) (2004) (requiring that upon receiving notice of the filing of an

appeal, "the board must file with the clerk a duly certified copy of the proceedings held before the board of appeals, including a transcript of the evidence heard before the board, if any, and the decision of the board including its findings of fact and conclusions"); S.C. Code Ann. § 6-29-800(F) (Supp. 2025) ("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."). However, the applicable statute *does* require that a planning commission "keep a record of its resolutions, findings, and determinations, which record must be a public record." § 6-29-360(B).

As noted above, the transcripts of the October and November meetings contain some discussion about this contested matter, but the Planning Commission continued this agenda item until its January meeting to further consider the question of the Restrictive Covenants. According to the January minutes, the Planning Commission discussed Verizon's application, but the minutes only describe what certain attorneys and witnesses stated—they do not in any way describe the Planning Commission's discussion or reasoning. Indeed, the January meeting transcript consists of just four pages and lacks the Planning Commission's deliberations.

Without evidence of the Planning Commission's deliberations at the January meeting—in the minutes, the transcript, or otherwise—this court cannot properly find that the Commission's decision is supported by the evidence. Perhaps most notably, we cannot determine whether the Commission erred in applying its own ordinances in seemingly summarily granting Verizon's permit application.² Accordingly, we find the circuit court erred in finding the Planning Commission provided a sufficient record of its decision.

II. Evidentiary Support for the Planning Commission's Determination

Appellants further argue the Planning Commission's decision was unsupported by the evidence presented and the proposed cell tower is inconsistent with Aiken County ordinances governing cell towers. Again, we agree.

² What we do have in the January transcript suggests the Commission chairperson was, at best, misinformed about the issue of the Restrictive Covenants. This is concerning because Attorney McCants discussed and provided copies of the Restrictive Covenants at the November meeting—for which the chair was present.

Aiken County has adopted a policy and desired goals for the permitting of wireless telecommunications facilities:

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.
- (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, S.C., Ordinances § 24-3.5.2 (2013).

As previously discussed, the record lacks sufficient evidence of the Planning Commission's findings and conclusions for this court to determine whether the decision is supported by the evidence. Aiken County adopted ordinances

regulating cell towers with the goal of "ensur[ing] 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." *Id.* However, neither the January meeting minutes nor truncated transcript provides *any* evidence that the Commission considered this permit application in accordance with County policy—the governing ordinance.

III. Restrictive Covenants

Finally, Appellants contend the cell tower is prohibited by the Restrictive Covenants. Although Appellants have consistently maintained this position from the outset of their challenge, the circuit court deemed this argument abandoned.

Verizon asserts Appellants abandoned their argument regarding the Restrictive Covenants and maintains no restrictive covenants apply to the Indian Trail Property. The Planning Commission and Aiken County also contend this issue has been abandoned. We find Respondents' abandonment argument is meritless.

Section 6-29-1145(B) of the South Carolina Code (2024), provides:

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.

In its order, the circuit court stated,

Appellants [sic] 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 [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.

This finding is inaccurate when considered alongside the hearing transcripts and appears to ignore the mandate of section 6-29-1145(B). Appellants' notice of appeal to the circuit court stated, "The verbal decision of the Planning Commission is not supported by the evidence and other information presented to it in conjunction with its consideration of the application for the construction of the wireless communication tower." Appellants further asserted, "The Planning Commission did not consider certain factors outlined in the Code of Ordinances for Aiken County, and which is required for consideration of applications for the construction of wireless communication towers within the County." Then at the circuit court's hearing, Appellants argued:

But in writing the brief, I like to know what the Planning Commission did and why they did it. It was kind of hard for me to brief that. But you'll see she addresses all of the various issues and matters that were raised before the Planning Commission and in particular whether or not the properties involved here are subject to restrictive covenants which is a key part of this, Your Honor. That is the statute talks in particular if property is governed by restrictive covenants. Then the Commission has to address that and they address that in this case. I don't agree as to how they address it because I can't tell how they address it but that's not in any written decision. But my point is with Verizon's position in this case, they are attempting to construct a decision of the Planning Commission for you.

Later in the hearing, Appellants again asserted,

I can't tell. I don't know what the Planning Commission did. I surely think the restrictive covenants are still a viable issue in this case as we take the position that this borders—is actually in the Bluffwood East's

development. But you can't tell because you don't have decisions from the Planning Commission.

Appellants' reference to section 6-29-1145(B), the statute governing local planning agencies with actual notice of restrictive covenants contrary to, conflicting with, or prohibitive of the "permitted activity," provided sufficient—and potentially controlling—authority to preserve this issue for the circuit court's review. This abandonment finding is particularly troubling when considered in conjunction with the sparse record of the Planning Commission's decisional meeting.

Conclusion

For these reasons, we reverse and remand this matter to the Planning Commission for deliberations consistent with the circuit court's disposition in the declaratory judgment proceeding, Aiken County's applicable ordinances and policies, and section 6-29-1145(B) of the South Carolina Code.

REVERSED AND REMANDED.

HEWITT and TURNER, JJ., concur.