THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2012-CP-26-8652
Appellate Case No. 2013-CP-26-08652

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

v.

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

RECORD ON APPEAL
VOLUME ONE

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RECEIVED
MAR 18 2014
SC Court of Appeals

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RECORD ON APPEAL
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Certificate of Counsel

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
TRISTAR INVESTORS, INC., MINERVA REALTY, LLC, and ANGELINE JOHNSON,	)	Civil Action No. 2012-CP-26-8652
Plaintiffs,	)	**ORDER GRANTING TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AND REFORMING CAPTION**
vs.	)	
THE HORRY COUNTY COUNCIL and AMERICAN TOWERS, LLC,	)	
Defendants.	)	

HORRY COUNTY
13 APR -8 PM 3:00
MELANIE ROGERS-WARD
CLERK OF COURT

This matter comes before me upon Motion of TriStar Investors, Inc. ("***TriStar Investors***"), Minerva Realty, LLC ("***Minerva***", a wholly owned subsidiary of TriStar Investors and together with TriStar Investors, collectively "***TriStar***") and Angeline Johnson (collectively "***Plaintiffs***") for a Temporary Restraining Order and Preliminary Injunction staying Horry County Council Resolution R-73-12 and enjoining the Horry County Council ("***Council***") and American Towers, LLC ("***American Towers***") (collectively "***Defendants***") from taking any action in reliance thereupon pending appeal to the Circuit Court. Plaintiffs filed an appeal from Council Resolution R-73-12 which granted American Towers permission to locate a new cellular communications tower in Horry County at TMS #38-00-01-020. A hearing was held before me on December 7, 2012 in which arguments were presented by counsel for all parties in this matter. Additionally, the parties completed initial and supplemental briefing on the issues.

Generally, for a preliminary injunction to be granted, the applicant must establish that: (1) it would suffer irreparable harm without the injunction; (2) it will likely succeed on the merits of the litigation; and (3) there is no adequate remedy at law. *Scratch Golf Co. v. Dunes W.*

Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). "Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate determination of the case on the merits." *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992). The purpose of an injunction is to preserve the status quo and prevent possible irreparable injury to a party pending litigation. *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 455, 626 S.E.2d 34, 36-37 (Ct. App. 2005).

In consideration of the information presented by the parties and the applicable standard of review, I find the requested relief is warranted. Plaintiffs have met their burden of proof on the essential elements of their claim for temporary relief. The status quo will be best preserved by staying any action in connection with the passage of Resolution R-73-12 until final resolution of the appeal.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That Defendants, their subsidiaries, sister or parent companies, affiliates, or agents, may take no action in reliance upon Horry County Resolution R-73-12;
2. Horry County Resolution R-73-12 is stayed pending a final resolution on this appeal;
3. Defendants shall not issue or accept any building permit or other administrative or regulatory permit or application related to Horry County Resolution R-73-12 or the new tower;
4. The caption of this case shall be reformed to replace "American Tower Corporation" with "American Towers, LLC" as the proper Defendant; and
5. That Plaintiffs will deposit with the Court a security bond in the amount of Five Thousand Dollars ($5,000.00).

IT IS SO ORDERED.

The Honorable Larry B. Hyman, Jr.
Presiding Judge, Fifteenth Judicial Circuit

Conway, South Carolina

3-26-, 2013

AGREED AS TO FORM:

By: _____

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-26-8652

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

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

Submitted by: Benjamin H. Culbertson, Presiding Judge	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

Decision of Horry County Council in passing Resolution R-73-12 is AFFIRMED.
(Attorney Emma Ruth Brittain is to prepare a formal order.)

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Benjamin H. Culbertson

Benjamin H. Culbertson, Circuit Court Judge | 2148 **Judge Code** | April 26, 2013 **Date**

For Clerk of Court Office Use Only

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

Susan P. MacDonald
L. Morgan Martin

ATTORNEY(S) FOR THE PLAINTIFF(S)

Emma Ruth Brittain
Thomas C. Brittain
David Christopher Slough

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Henry Young

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

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

STATE OF SOUTH CAROLINA **COUNTY OF HORRY**	)	**IN THE COURT OF COMMON PLEAS** **FIFTEENTH JUDICIAL CIRCUIT**
TRISTAR INVESTORS, INC., MINERVA REALTY, LLC, and ANGELINE JOHNSON, Plaintiffs, v. THE HORRY COUNTY COUNCIL, and AMERICAN TOWERS, LLC, Defendants.	)	Civil Action No. 2012-CP-26-8652 **ORDER ENTERING FINAL JUDGMENT AGAINST PLAINTIFFS**

FILED
HORRY COUNTY
13 MAY 21 PM 2:30
MELANIE L. SWARD
CLERK OF COURT

This matter comes before the Court upon hearing of the merits of the case filed by TriStar Investors, Inc. ("TriStar"), Minerva Realty, LLC ("Minerva"), a wholly owned subsidiary of TriStar (TriStar and Minerva may be referred to collectively as "TriStar/Minerva"), and Angeline Johnson ("Johnson") (TriStar, Minerva, and Johnson may be collectively referred to as "Plaintiffs") appealing Resolution No. R-73-12 adopted by the Horry County Council (the "Horry County Council"). A hearing was held before me on April 26, 2013 in which arguments were presented by counsel for all parties in this matter.

Plaintiffs are represented by Susan MacDonald, Esquire, with Nelson, Mullins, Riley and Scarborough, and Morgan Martin, Esquire, with the Law Offices of L. Morgan Martin, P.A. Defendant Horry County is represented by Emma Ruth Brittain with Thomas & Brittain, P.A. Defendant American Towers, LLC is represented by Tommy Brittain, Esquire, with The Brittain Law Firm, P.A.; David Slough, Esquire, with Nexsen Pruet, LLC; and Jonathan Yates, Esquire, with Hellman, Yates & Tisdale, P.A. The issues have been heard and this decision is hereby rendered.

FINDINGS OF FACT

1

Defendant American Towers, LLC, f/k/a American Towers, Inc. ("American Towers") operates a communications tower at the property located at the corner of Huggins Road and Route 9, Myrtle Beach, South Carolina 29572.

1. On or about August 31, 2012, American Towers filed an application with supporting materials with Horry County's Planning & Zoning Department, seeking to relocate American Towers' existing tower to a nearby property located at 215 Huggins Road, Loris, South Carolina.

2. On October 16, 2012, the Horry County Council held a public hearing to vote on the matter. A representative for Defendant American Towers appeared at that meeting and made a presentation. A representative for Plaintiffs also appeared at that meeting and made a presentation.

3. On October 16, 2012, the Horry County Council unanimously approved Resolution No. R-73-12 authorizing Defendant American Towers to relocate its existing communications tower to a nearby property. Horry County Council amended Resolution R-73-12 to include a requirement that Defendant American Towers remove the existing tower within 120 days of final inspection and approval of the new tower. (All further references to R-73-12 by the Court herein include the amendment).

4. Plaintiffs initiated this action on November 8, 2012, by filing their Summons and Complaint in the Horry County Court of Common Pleas. All parties consented to the hearing of this matter by the undersigned in the Georgetown County Courthouse, Georgetown, South Carolina, with no objection as to the hearing venue.

CONCLUSIONS OF LAW

2/MHC

1. This Court's scope of review in this matter is limited. As conceded by Plaintiffs, the decision of the Horry County Council must be affirmed unless arbitrary, unreasonable, an abuse of discretion, or in excess of lawfully delegated power. As also conceded by Plaintiffs, the evidence in this case is limited to the record before the Horry County Council. See Gay v. City of Beaufort, 364 S.C. 252; 254, 612 S.E.3d 467 (Ct. App. 2005)(City council decision should not be disturbed unless decision is arbitrary, unreasonable, or obvious abuse of discretion); McSherry v. Spartanburg County Council, 371 S.C. 586, 589; 641 S.E.2d 431 (2007) (in reviewing the discretionary decision of a legislative body, our courts are loath to substitute their judgment for that of elected representatives") (citation omitted).

2. The Court has reviewed the record before it and concludes that Horry County Council's unanimous decision enacting R-73-12, was based on a thorough documented review and record prepared by the Horry County Planning and Zoning Department; accordingly, I find that the relief requested by Plaintiffs is not warranted, which finding is further supported by the reasons set forth below.

3. In approving Resolution No. R-73-12, Horry Council County did not act arbitrarily, unreasonably, in an abuse of its discretion, or in excess of lawfully delegated power. American Towers' application did not seek to operate multiple towers but to relocate its existing tower. The record, including Defendant TriStar's application and Horry County Council's amendment to the Resolution requiring demolition of the existing tower within 120 days of final inspection and approval of the new tower, clearly establishes that American Towers' new tower approved by Horry County Council Resolution No. R-73-12 is a re-location rather than a co-location.

3/mhc

4. The Court further finds that approval of the tower as a relocation is within the lawfully delegated power of Horry County Council, and, based on the record before the Court, is neither arbitrary or capricious nor an abuse of discretion. The Court finds the restrictive reading urged by Plaintiffs is not supported by the language of the County's zoning ordinance

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The decision of the Horry County Council is passing Resolution No. R-73-12 is hereby affirmed. This appeal of Resolution Horry County Council No. R-73-12 is denied. Final judgment is entered in this case against Plaintiffs TriStar Investors, Inc., Minerva Realty, LLC, and Angeline Johnson and in favor of Defendants the Horry County Council and American Towers, LLC.

2. The Temporary Restraining Order and Preliminary Injunction entered in this case are void and no longer in effect. Paragraphs 1-3 of the Order Granting Temporary Restraining Order And Preliminary Injunction And Reforming Caption are hereby vacated and declared null and void.

3. Defendants and their subsidiaries, sister or parent companies, affiliates, and agents may take action in reliance upon Horry County Council Resolution No. R-73-12.

4. Horry County Council Resolution No. R-73-12 is no longer stayed.

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

6. This case is dismissed with prejudice.

7. This Order shall be a final order.

4/mtc

AND IT IS SO ORDERED.

Benjamin H. Culbertson

The Honorable Benjamin H. Culbertson
Fifteenth Judicial Circuit

This 8th day of May, 2013

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-26-8652

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

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

Submitted by: Benjamin H. Culbertson, Presiding Judge	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☑ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

Plaintiffs' Motion for Supersedeas is DENIED.

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Benjamin H. Culbertson, Circuit Court Judge	2148	May 31, 2013
	Judge Code	**Date**

For Clerk of Court Office Use Only

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

Susan P. MacDonald
L. Morgan Martin

ATTORNEY(S) FOR THE PLAINTIFF(S)

Emma Ruth Brittain
Thomas C. Brittain
Jonathan Yates

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Henry Young

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

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

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

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

The South Carolina Court of Appeals

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

v.

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

Appellate Case No. 2013-001178

ORDER

Appellants have filed a Petition for *Ex Parte* Supersedeas Relief. Because Appellants failed to serve Respondents and failed to demonstrate that exigent circumstances require that action be taken *ex parte*, the petition is denied. *See* Rule 241(d)(6), SCACR (providing that an *ex parte* order shall issue only if (1) immediate and irreparable injury, loss or damage will result before the opposing party can respond and (2) the moving party's attorney sets forth the efforts made to give notice or the reasons notice should not be required).

John Cannon Jr. C.J.
FOR THE COURT

Columbia, South Carolina

FILED
6-5-13 AS

cc:
Susan Pardue MacDonald
James Christopher Clark
Michael J. Anzelmo
Emma Ruth Brittain

The South Carolina Court of Appeals

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

v.

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

Appellate Case No. 2013-001178

ORDER

Appellants have filed a petition for supersedeas, asking this court "to suspend execution of the Court of Common Pleas' judgment and to preserve the status quo pending appeal." After careful consideration, Appellants' petition is temporarily granted pending this Court's receipt of any return filed by the Respondents and this Court's final resolution of the petition. This Court will act on the petition upon receipt of any return or after the expiration of ten days.

FOR THE COURT

Columbia, South Carolina

cc:
Susan Pardue MacDonald
James Christopher Clark
Michael J. Anzelmo
Emma Ruth Brittain
David C. Slough
Thomas C. Brittain
Andrew Preston Brittain

FILED
6/7/13 AS

The South Carolina Court of Appeals

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

v.

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

Appellate Case No. 2013-001178

ORDER

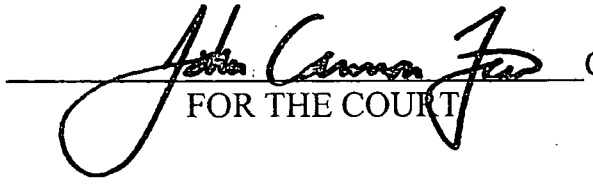
The petition for supersedeas is denied.

There are three petitioners—TriStar, its real estate subsidiary, and the landowner. There are two respondents to the petition—American Towers and Horry County Council.

As to TriStar and its subsidiary's efforts to enjoin American Towers, the Rules of Appellate Procedure were never intended to allow a corporation that fails to outmaneuver its competitor in the marketplace to then invoke the power of the court to regain its lost competitive advantage. The key fact we rely on in denying this supersedeas request is that TriStar and American Towers are competitors. In addition, while we do not intend to address the merits of the appeal, we find ourselves required to observe that there is no contractual relationship between them and they owe each other no legal duties. The cell phone tower in dispute belongs to American Towers. Thus, TriStar seeks to control through the power of the court the ability of its competitor to dispose of the competitor's own property. If American Towers wants to disassemble its own cell phone tower, and the objection to its doing so is voiced by a competitor with the stated intent that the competitor may eventually gain the use of a tower without having to pay to construct it, this court has no business, and no power, to interfere.

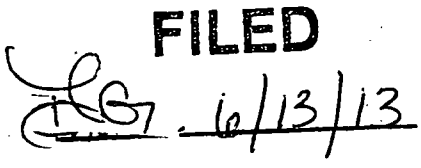
As to the landowner, we find no basis in this petition or in any of its attachments to support a conclusion that she cannot be fully compensated with money damages if her theory of American Towers' breach of the lease is valid.

To the extent the petition for supersedeas seeks to enjoin Horry County Council as to the manner in which it permits the location of cell phone towers, we find no basis to grant the petition.



C.J.
FOR THE COURT

Columbia, South Carolina



cc:
Susan Pardue MacDonald
James Christopher Clark
Michael J. Anzelmo
Emma Ruth Brittain
David C. Slough
Thomas C. Brittain
Andrew Preston Brittain
Jonathan L. Yates
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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
TRISTAR INVESTORS, INC., MINERVA REALTY, LLC, and ANGELINE JOHNSON,	)	Civil Action No. 2012-CP-26-_____
Plaintiffs,	)	**PLAINTIFFS' ORIGINAL COMPLAINT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**
vs.	)	
THE HORRY COUNTY COUNCIL; and AMERICAN TOWER CORPORATION,	)	
Defendants.	)	

HORRY COUNTY
12 NOV -8 PM 3:56
CLERK OF COURT

Pursuant to South Carolina Rule of Civil Procedure 65 and Chapter 13, Article VII, Section 13-75 of the Horry County, South Carolina, Code of Ordinances, TriStar Investors, Inc. ("***TriStar***"), Minerva Realty, LLC, a wholly owned subsidiary of TriStar, and Ms. Angeline Johnson submit this Original Complaint and Application for Temporary Restraining Order and Preliminary Injunction and would respectfully show as follows:

I.
OVERVIEW

1. This is an appeal from a decision of the Horry County Council (the "***Council***") and an application for a temporary restraining order and a preliminary injunction that would prevent irreparable injury pending final resolution of this matter.

2. At the surface, this case is about whether the Council improperly granted Defendant American Tower Corporation ("***American Tower***") approval to construct a cell tower within 2½ miles of two other cell towers. But this case has its roots in American Tower's corporate policy of anti-competitive behavior, currently subject to litigation in *TriStar Investors,*

Inc. v. American Tower Corporation, et al., Case No. 3:12-cv-499; in the United States District Court, Northern District of Texas.

3. In 2010, TriStar bought the right to control the cellular communications activity on Ms. Johnson's property following the expiration of American Tower's current lease in January 2015. TriStar paid Ms. Johnson $100,000 and agreed to pay her 40% of the revenue that the tower site on her property generates upon the expiration of American Tower's current lease.

4. Rather than accept the results of the free market at work, American Tower concocted a scheme to attempt to take back what it lost fair and square. The scheme is made possible only by misrepresenting facts to the Horry County Council and securing their unwitting participation. This appeal seeks to protect competition, protect landowners, and require the Council to follow the local ordinances in deciding this issue.

II.
PARTIES

5. Plaintiff TriStar Investors, Inc. is a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania.

6. Plaintiff Minerva Realty, LLC is a Delaware limited liability company ("***Minerva***") with its principal place of business in Pittsburgh, Pennsylvania. Minerva is a wholly owned subsidiary of TriStar with holdings exclusively in South Carolina. All business of Minerva is conducted under TriStar letterhead and all liabilities of Minerva are funded directly by TriStar, so TriStar and Minerva are essentially undistinguishable in South Carolina.

7. Plaintiff Angeline Johnson is an individual residing in Horry County, South Carolina.

8. Defendant Horry County Council is an administrative agency located in Horry County, South Carolina. The Horry County Council is responsible for, among other things,

granting or denying Telecommunications Tower Permit requests pursuant to Chapter 13, Article VII of the Horry County, South Carolina, Code of Ordinances.

III.
JURISDICTION AND VENUE

9. This Court has personal jurisdiction over the Horry County Council because the Horry County Council is domiciled in South Carolina.

10. This Court has subject matter jurisdiction over this matter because TriStar and Ms. Johnson filed this Complaint challenging a decision made by the Horry County Council within thirty days after the decision was made at the Council meeting. HORRY COUNTY, SOUTH CAROLINA, CODE OF ORDINANCES, Chapter 13, Article VII, Section 13-75. As the owner and easement holder of the property underlying the current tower site, located less than 2½ miles away from American Tower's proposed site, Plaintiffs have a substantial interest in the Council's wrongful issuance of American Tower's Telecommunications Tower Permit.

11. Venue is proper in Horry County, South Carolina because all or a substantial part of the events or omissions giving rise to the claim occurred in Horry County pursuant to S.C. Code of Laws § 15-7-10.

IV.
FACTS

A. The status of the cell tower and related rights on Ms. Johnson's property

12. American Tower currently operates a cell tower on Ms. Johnson's property pursuant to a lease with a term that runs through January 13, 2015 (the "***Lease***").[1] In June of

[1] American Tower purportedly obtained an extension of the Lease in 2007 which would extend the term through January 13, 2030. American Tower did not record evidence of this purported Lease extension in the property records until September 2, 2010, which was two months after TriStar recorded its easement agreement and after TriStar notified American Tower of TriStar's acquisition of its easement. TriStar is a bona fide purchaser that had no knowledge of the purported extension at the time it purchased an easement. TriStar remains unaware of the terms of the purported extension as Ms. Johnson does not have a copy of the corresponding amendment and is thus uncertain whether to recognize the purported extension.

2010, Ms. Johnson gave TriStar, a competitor of American Tower's, an easement that gives TriStar "the right to modify, extend, expand, and/or terminate" the Lease for the tower site on her property. The easement agreement between Ms. Johnson and TriStar (the "***Easement***") would allow TriStar to operate a cell tower site on Ms. Johnson's property should TriStar decide to not extend American Tower's Lease.[2]

13. TriStar's Easement is subject to American Tower's Lease. American Tower has made no attempt to negotiate or secure an extension of the Lease with TriStar, nor has American Tower requested TriStar recognize the purported extension.

14. The carrier tenants are entitled to peaceful and quiet enjoyment of the tower during the term of their lease with American Tower. On information and belief, the carriers have not reported any dissatisfaction with the tower or a desire to move towers unless they are forced to because the existing tower is removed. These carrier tenants have the right to continue using the tower without interruption until the Lease expires in 2015 – the same time that the carriers' leases with American Tower expire.

B. American Tower's application to the Horry County Council

15. The applicable zoning laws provide that new cell towers cannot be built within 2½ miles of existing cell towers. HORRY COUNTY, SOUTH CAROLINA, CODE OF ORDINANCES, Appendix B, Article XVI, Section 1605(a)(2). The existing tower on Ms. Johnson's property is within 2½ miles of American Tower's proposed location for its new tower. There is also another tower (the "***SBA Tower***"), already constructed, that also is within 2½ miles of American Tower's proposed location. The Horry County Ordinances prohibit American Tower from constructing yet another tower within this 2½ mile radius.

[2] TriStar recorded its Easement in the property records on July 2, 2010 and promptly notified American Tower of its easement interest.

16. American Tower sought approval from the Horry County Council for a Telecommunications Tower Permit to build a new tower across the street from its existing, fully-functional tower in order to make an example out of Ms. Johnson for doing business with TriStar and in an attempt to serve as a "lesson" to other landowners who dare to do business with TriStar. American Tower's application was presented to the Council on October 16, 2012, in the form of Resolution R-73-12 (attached as Exhibit A). Contrary to the applicable County ordinances, the Council approved the Resolution, in part as the result of American Tower's misleading petition and presentation to the Council.

17. The Council may waive the 2½ mile prohibition for new towers only if "such waiver is justified and the applicant can supply proof that co-location is not practical or warranted." HORRY COUNTY, SOUTH CAROLINA, CODE OF ORDINANCES, Chapter 13, Article VII, Section 13-73(b). To satisfy this requirement, Section 13-73(c)(3) required American Tower to provide, among other things, "[d]etailed information as to why the existing towers within two and one-half (2½) miles of the proposed tower . . . cannot reasonably be utilized for the proposed antenna installation." ***American Tower provided the Council with no information at all to show why the existing tower cannot be used in the future. Further, American Tower provided the Council with no information at all to show why the SBA Tower cannot be used in the future.***

18. In an attempt to frustrate TriStar's plans to operate the existing tower site once the Lease expires and to further punish Ms. Johnson, upon information and belief, American Tower requested the Council to mandate that the existing tower be taken down. The mandate that the tower on Ms. Johnson's property be torn down effectively holds the tenants hostage, leaving them with no option but to relocate to the new tower or cease service in the area.

19. Unaware that it was being manipulated by American Tower's anti-competitive agenda, the Council granted its request and mandated that the existing tower be taken down within 120 days of completion of the new tower. The existing tower has effectively served Horry County for over 17 years with no incident and presents no threat or danger to the public. There is no reason that this tower needs to be taken down, and certainly not before TriStar's application to build a replacement tower to the existing tower on Ms. Johnson's property is heard.

20. Despite this complete lack of evidence mandated by county ordinances, on October 16, 2012, the Council approved American Tower's request for a permit to construct a new tower on a new landowner's property. TriStar attended the hearing and attempted to explain its opposition to American Tower's request.

21. Plaintiffs respectfully request a temporary restraining order and preliminary injunction to maintain the status quo and prevent American Tower from tearing down the existing tower and taking any actions to begin construction of the new tower, pending Plaintiffs' appeal of the Council's decision to this Court and the Court's resolution of this dispute. Plaintiffs further request that this Court reverse the Council's decision to approve American Tower's application to construct a new tower and tear down the existing tower.

V.
AMERICAN TOWER'S ANTI-COMPETITVE AND DECEPTIVE BEHAVIOR

22. American Tower's current attempt to build a new tower in Horry County is but one of many examples of anti-competitive conduct by American Tower. To stop this conduct, TriStar filed suit against American Tower on February 16, 2012 in federal court in Dallas, Texas (Civil Action No.: 3:12-CV-499). By failing to properly apply the Horry County Ordinances and

granting American Tower's application without full information, the Council unwittingly assists American Tower in its attempts to monopolize the operation of wireless communications towers.

23. TriStar bought the right to control the cellular communications activity on Ms. Johnson's property by paying her $100,000 and agreeing to pay her 40% of the net revenue that the tower site on her property generates upon the expiration of American Tower's Lease. American Tower currently pays $760.44 a month for using her property for the cell tower. American Tower's revenues from this same cell tower are conservatively estimated to be $7,431.00 a month (calculated based on American Tower's publicly disclosed revenues, towers, and tenants). Under Ms. Johnson's deal with TriStar, she would be entitled to share 40% of the net revenue of the site upon expiration of American Tower's lease, each and every month, likely more than tripling the compensation for the use of her land. If American Tower is permitted to build its new tower, this would only further American Tower's pattern of anti-competitive behavior, behavior that harms everyone who uses wireless services in the area and especially Ms. Johnson.

24. American Tower intentionally misled the Council. There is no technical reason for relocating the existing tower, which already serves the wireless communications needs in the surrounding geographic area and will continue to do so for the foreseeable future. American Tower presented no evidence that the wireless companies whose antennas are on the existing tower need to relocate those antennas to a new tower. On information and belief, if the existing tower remains in place, the carriers on the tower prefer to and will choose to remain on the existing tower.

25. American Tower represented to the Council's staff that American Tower "ha[s] not been able to secure an extension to the lease for the existing tower site." This is false.

American Tower signed a 15-year lease extension with Ms. Johnson on October 15, 2007, which purported to extend the Lease at the existing tower site until January of 2030. Even if American Tower believes that this Lease extension is unenforceable against TriStar as a bona fide purchaser, American Tower has not tried to replace it with a valid extension. American Tower has not contacted Ms. Johnson or TriStar about extending the Lease.

26. If the Lease with American Tower is not extended, TriStar is fully prepared to and intends to continue to operate the existing tower site. As the tower site operator, TriStar will provide all of the services currently provided by American Tower at substantially lower cost to the wireless companies and at greater benefit to Ms. Johnson, the property owner at the existing site. Without intervention from this Court, however, American Tower's attempts to monopolize the market and manipulate the Council will successfully eliminate TriStar from fairly competing in this area.

VI.
THE COUNCIL ABUSED ITS DISCRETION

27. While the Council may exercise discretion in granting or denying Telecommunications Tower Permits, the Council "is not left free to make any determination whatever that appeals to its sense of justice. It must abide by and comply with the standard prescribed by the local ordinance and zoning statutes." *Hodge v. Pollock*, 223 S.C. 342, 348, 75 S.E.2d 752, 755 (1953) (overturning zoning board's grant of a variance because there was "no showing" that the conditions for granting a variance had been met).[3] In holding that a zoning

[3] The standard South Carolina courts apply to the review of a zoning board's decision is extremely similar to the standard courts apply when reviewing a county council's decision. *Compare Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 234, 642 S.E.2d 565, 567 (2007) ("a decision of a city zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion."), *with McSherry v. Spartanburg Cnty. Council*, 371 S.C. 586, 590, 641 S.E.2d 431, 433 (2007) (holding that a county council's "decisions should not be upset on appeal unless [they are] arbitrary, unreasonable, in obvious abuse of discretion, or in excess of lawfully delegated power.").

board improperly granted a variance, the South Carolina Supreme Court noted, "[t]he statute authorizing variances serves a useful purpose but the requisite conditions must be met." *Id.*

28. The South Carolina Court of Appeals held that one county council's decision to go forward with a public construction project was arbitrary because it was based only on "three conclusory statements that [were] unsupported by any factual grounds related to the renovation project." *Sloan v. Greenville County*, 356 S.C. 531, 560, 590 S.E.2d 338, 353 (Ct. App. 2003). The court determined that this conclusory evidence did "not provide sufficient detail to allow the County Council and the public to make an intelligent review of the decision." *Id.*

29. Similarly, the Horry County Council's approval of Resolution R-73-12 was not supported by any factual grounds and was clearly contrary to the weight of the evidence. Section 1605 of the Horry County Zoning Ordinance states that "no new freestanding telecommunication tower shall be permitted unless the applicant demonstrates that no existing telecommunication facility can accommodate the applicant's proposed use." American Tower failed to demonstrate that "no existing telecommunication facility can accommodate the applicant's proposed use" because the existing tower on Ms. Johnson's property is being used now for exactly the same purpose for which American Tower proposes to use the new tower.

30. The Council had no discretion to waive the requirement of Section 1605 unless American Tower established that use of the existing tower is not practical or warranted. HORRY COUNTY, SOUTH CAROLINA, CODE OF ORDINANCES, Chapter 13, Article VII, Section 13-73(b). The ordinance unequivocally outlines the only bases for determining that use of an existing tower is not practical or warranted. In order to enable the Council to properly waive the co-location requirement of Section 1605, American Tower must have provided the following information to the Council:

1. A list of all existing telecommunication towers within 2½ miles of the proposed tower;

2. Maps showing broadcast coverage from the proposed site together with coverage from American Tower's existing sites that would connect with and are adjacent to the proposed site;

3. Detailed information as to why the existing towers within 2½ miles of the proposed tower cannot reasonably be utilized for the proposed antenna installation; and

4. Any other relevant information related to the proposed site as may be requested.

HORRY COUNTY, SOUTH CAROLINA, CODE OF ORDINANCES, Chapter 13, Article VII, Section 13-73(c).

31. American Tower offered no facts or evidence to show the Council that the existing tower could not serve its needs going forward, as required. Indeed, just the opposite is true. American Tower and, more importantly, the wireless companies with antennas on the existing tower, currently use the existing tower for the same purposes for which American Tower's proposed new tower would be used. The longstanding and ongoing use of the existing tower demonstrates that the tower can continue to satisfy the wireless needs of the area.

32. American Tower offered no facts or evidence to show the Council that the existing SBA Tower could not serve the carriers going forward.

33. American Tower's only argument for obtaining a waiver of the co-location requirement was that the existing tower is closer to the road than its proposed tower would be. This was apparently an attempt to raise concerns that the existing tower would pose a safety risk to the public roadway if it fell over. This far-fetched improbability is not a basis identified in the ordinance for determining that use of an existing tower is not "practical or warranted" and therefore cannot justify a co-location waiver. Nor does this argument have any merit.

34. It is commonplace for towers to be similarly situated, with the height of the tower exceeding the distance to the nearest road. Upon information and belief, there are at least 608 such tower sites in South Carolina alone, of which American Tower owns or operates at least 189. Further, there are at least 15 such tower sites in Horry County, of which American Tower owns or operates at least 8. TriStar is unaware of any safety issues arising from the proximity of these numerous towers to roads, and American Tower has provided no evidence of any danger arising from this common business practice of American Tower. Any purported safety concerns about the existing tower are misplaced and a misguided attempt by American Tower to deceive the Council in Horry County.

35. This is not a case of divergent evidence and a County Council exercising discretion. American Tower completely failed to provide evidence mandated by County ordinances. Further, American Tower cannot supply the mandated evidence. All evidence does show and must show that the existing cell tower on Ms. Johnson's property could be used for American Tower's purported purpose in constructing the new tower, as the existing tower has done so for nearly two decades. American Tower therefore failed to provide the required "[d]etailed information as to why the existing towers within two and one-half (2½) miles of the proposed tower . . . cannot reasonably be utilized for the proposed antenna installation." HORRY COUNTY, SOUTH CAROLINA, CODE OF ORDINANCES, Chapter 13, Article VII, Section 13-73(c). As a result, American Tower did not establish and the Council could not properly find that use of the existing tower was not practical or warranted. The Council's decision to waive the co-location requirement of Section 1605 was not supported by any evidence and therefore should be considered arbitrary and should not be sustained. *See Bannum, Inc. v. City of Columbia*, 335 S.C. 202, 207, 516 S.E.2d 439, 440-41 (1999) (overturning zoning board's decision based on

finding that "[its] decision was based, not on the requirements of the 'special exception' ordinance", there was "simply no concrete evidence to support th[e] fact" upon which the board made its decision, and that "[t]his is simply insufficient to constitute 'any evidence' under our standard of review.").

36. The only evidence shows that the existing cell tower on Ms. Johnson's property could be used for American Tower's purported purpose in constructing the new tower. American Tower therefore failed to provide the required "[d]etailed information as to why the existing towers within two and one-half (2½) miles of the proposed tower . . . cannot reasonably be utilized for the proposed antenna installation." HORRY COUNTY, SOUTH CAROLINA, CODE OF ORDINANCES, Chapter 13, Article VII, Section 13-73(c). As a result, American Tower did not establish and the Council could not properly find that use of the existing tower was not practical or warranted. The Council's decision to waive the co-location requirement of Section 1605 was "based, not on the requirements of the . . . ordinance" and therefore was error and should be reversed. *See Bannum, Inc. v. City of Columbia*, 335 S.C. 202, 206, 516 S.E.2d 439, 441 (1999); *see also Wyndham Enterprises, LLC v. City of N. Augusta*, __ S.E. 2d___, No. 5030, 2012 WL 3828237, at *4 (S.C. Ct. App. Sept. 5, 2012) (reversing zoning board's decision "because [its] decision was not supported by competent, substantial, and material evidence, and was based on opinion and speculation testimony . . .").

37. In order to afford Plaintiffs due process, this Court should set aside the Council's decision and hold that American Tower's application must not be granted in contravention of the Horry County Ordinances. The Court should enjoin American Tower from taking actions in furtherance of building a new tower or demolishing the existing tower until the Court has fully

adjudicated Plaintiffs' claims. American Tower will not be harmed by such action, as American Tower's current Lease expires, at the earliest, on January 13, 2015.

VII.
TRISTAR AND MS. JOHNSON WILL BE IRREPARABLY HARMED BY THE COUNCIL'S DECISION

38. Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, a plaintiff is entitled to an injunction when an affidavit or verified complaint alleges facts sufficient to constitute a cause of action for an injunction, and the plaintiff shows an injunction is reasonably necessary to protect its legal rights pending in the litigation. *Transcont'l Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 480-81, 167 S.E.2d 313, 315 (1969). The purpose of an injunction is to preserve the status quo and prevent possible irreparable injury to a party pending litigation. *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 455, 626 S.E.2d 34, 36-37 (Ct. App. 2005).

39. Generally, for a preliminary injunction to be granted, the applicant must establish that: (1) it would suffer irreparable harm without the injunction; (2) it will likely succeed on the merits of the litigation; and (3) there is no adequate remedy at law. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). The plaintiff is not required to prove an absolute legal right when seeking a preliminary injunction. Rather, the plaintiff must present a reasonable question as to the existence of such a right. *Id.* at 456, 626 S.E.2d at 37. "Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits." *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992).

40. Plaintiffs are likely to succeed on the merits of their challenge of the Council's approval of Resolution R-73-12. The Council's ruling was arbitrary, unreasonable, and an abuse

of discretion because it was not supported by substantial evidence and failed to follow the applicable zoning laws. *See e.g., Sloan v. Greenville County*, 356 S.C. 531, 560, 590 S.E.2d 338, 353 (Ct. App. 2003). The facts identified herein establish a prima facie showing that TriStar and Ms. Johnson are entitled to a temporary restraining order and/or a preliminary injunction.

41. If, pending review of the Council's decision by this Court, American Tower acts on the Council's October 16 ruling, Plaintiffs will not have an adequate remedy at law. If American Tower is able to construct its new tower and tear down the one on Ms. Johnson's property, the carrier tenants will be forced to relocate to the new tower. This loss of business relationship and harm to goodwill is an irreparable injury.

42. TriStar has alleged anti-trust violations against American Tower. These claims, among others, are pending in the federal lawsuit in Dallas, Texas. TriStar has alleged that American Tower deceives landowners into believing that if the landowners enter into deals with TriStar, American Tower will make an example out of them by moving the tower to a different property. If American Tower is allowed to do that here, it will be because the Council failed to properly apply the Horry County Ordinances. This inequitable result will enable American Tower to continue deceiving landowners into believing that it will move carriers from one tower to another if the landowners do a deal with TriStar.

43. Within three weeks of filing a counterclaim in the federal litigation, American Tower sued TriStar and various landowners in four state court lawsuits around the country, including the Court of Common Pleas in Horry County, South Carolina, alleging that TriStar induced the landowner to breach a nondisclosure clause of American Tower's lease with the landowner that purports to prevent the landowner from revealing the terms of the lease to potential competitors, rendering TriStar's easement with the landowner invalid. There was no

legitimate justification for bringing this series of lawsuits against TriStar with identical claims based on the same facts in multiple courts. These lawsuits are motivated by an intent to inflict harm external to the litigation or to the result reached in the litigation.

44. As demonstrated by its sham, vexatious litigation against TriStar, American Tower routinely files lawsuits against its competitors and landowners to enforce these nakedly anticompetitive nondisclosure clauses. This litigation is part of American Tower's pattern of intimidating landowners and blocking legitimate competition in the tower operating market from rivals like TriStar.

45. American Tower's anticompetitive scheme will be significantly advanced if American Tower builds a new tower and the tenants move from the existing tower. Accordingly, TriStar's business will be further damaged, along with TriStar's relationships with the carriers and with landowners on cell tower sites throughout the country. The damages that would result from American Tower's conduct are not readily ascertainable or subject to valuation.

46. If the Court determines after the carriers have moved from the existing tower that the Council abused its discretion, it will be nearly impossible for the carriers to move back to the existing tower or for TriStar to undo the reputational damage that it suffers. TriStar will be irreparably harmed if American Tower is permitted to build its new tower and tear down the existing tower without the Court first determining whether these acts are in fact permitted by the Horry County Ordinances.

47. The tenants have the right to enjoy uninterrupted use of the tower until their lease with American Tower expires, at the earliest, in 2015.[4] If the existing tower is torn down, the carrier tenants will lose their right to quiet enjoyment on the tower during the term of their lease.

[4] The carriers' leases with American Tower are coterminous with the Lease between American Tower and Ms. Johnson, including lease extensions.

"It is virtually universally . . . held that a lease implies a covenant of quiet enjoyment." *Diminich v. 2001 Enterprises, Inc.*, 292 S.C. 141, 144, 355 S.E.2d 275, 277 (Ct. App. 1987) (citing Friedman on Leases § 29.201 (2d ed. 1983)) (reversing trial court's ruling that covenant of quiet enjoyment was not implied in lease). As a result, the carriers will be irreparably harmed if American Tower is permitted to take down the tower on Ms. Johnson's property.

48. Ms. Johnson will also be irreparably harmed if American Tower is permitted to build a new tower across the street from the existing tower and to take down the tower that is currently on her property. Ms. Johnson, a retired widow, will lose out on the revenue share payments that she is entitled to receive and upon which she will rely.

49. In March of this year, American Tower's CEO, James Taiclet, was asked what would happen to American Tower's profits when American Tower's leases with property owners come up for renewal. Mr. Taiclet told investment analysts that "[t]he leverage on our side is that we can move the tower nearby and go onto other leased land because we own the customer contract." When Mr. Taiclet was asked what the costs would be of moving a tower, he said "we would probably only do it as a demonstration." American Tower's actions are exactly that, a malicious "demonstration," and the victim is Ms. Johnson.

50. Plaintiffs ask that the Court issue a temporary restraining order that prohibits American Tower from taking any actions in furtherance of constructing a new tower within 2½ miles of the existing tower and from taking down the existing tower, pending this Court's resolution of the dispute. A preliminary injunction would preserve the status quo. No irreparable injury will befall American Tower because (i) American Tower's current Lease expires, at the earliest, in 2015, and (ii) Plaintiffs are willing to post a bond in an appropriate amount, which would fully protect American Tower. For these reasons and because monetary damages cannot be

ascertained to adequately compensate TriStar and Ms. Johnson in this case, injunctive relief should be granted.

VIII.
PRAYER

51. Plaintiffs respectfully request that the Court enter a temporary restraining order and preliminary injunction that prohibit American Tower from taking any actions in furtherance of constructing a new tower within 2½ miles of the existing tower and from taking down the existing tower.

52. Plaintiffs respectfully request that the Court reverse the decision of the Horry County Council in approving Resolution R-73-12.

53. Plaintiffs respectfully request that the Court enter judgment awarding them costs and attorneys' fees and all other relief to which Plaintiffs may be entitled.

NELSON MULLINS RILEY & SCARBOROUGH , LLP

By: _____

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

EXHIBIT A

COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA)

RESOLUTION NO. R-73-12

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

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

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

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

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

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

AND IT IS SO RESOLVED.

Dated this 16th day of October 2012.

Tele# 12-09-001

HORRY COUNTY COUNCIL

H. Tom Rice, Chairman

Harold G. Worley, District 1

Brent J. Schulz, District 2

Marion D. Foxworth, III, District 3

Gary Loftus, District 4

Paul D. Price, Jr., District 5

Robert P. Grabowski, District 6

James R. Frazier, District 7

Carl H. Schwartzkopf, District 8

W. Paul Prince, District 9

Jody Prince, District 10

Al Allen, District 11

Attest:

Patricia S. Hartley, Clerk to Council

Tele# 12-09-001

County Council Decision Memorandum
Horry County, South Carolina

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

ISSUE:

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

PROPOSED ACTION:

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

RECOMMENDATION:

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

BACKGROUND:

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

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

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

Tele# 12-09-001

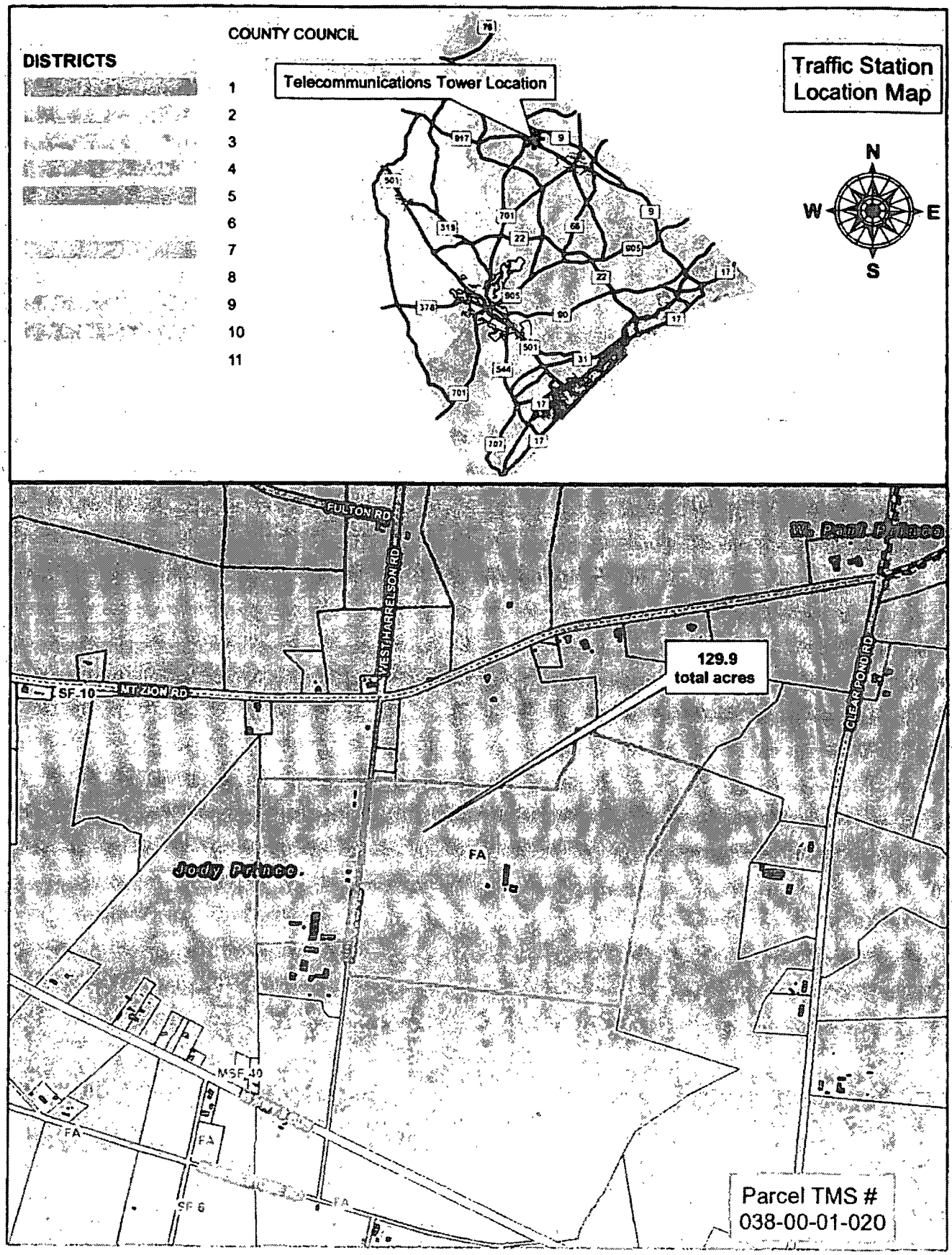
Telecommunications Tower Permit

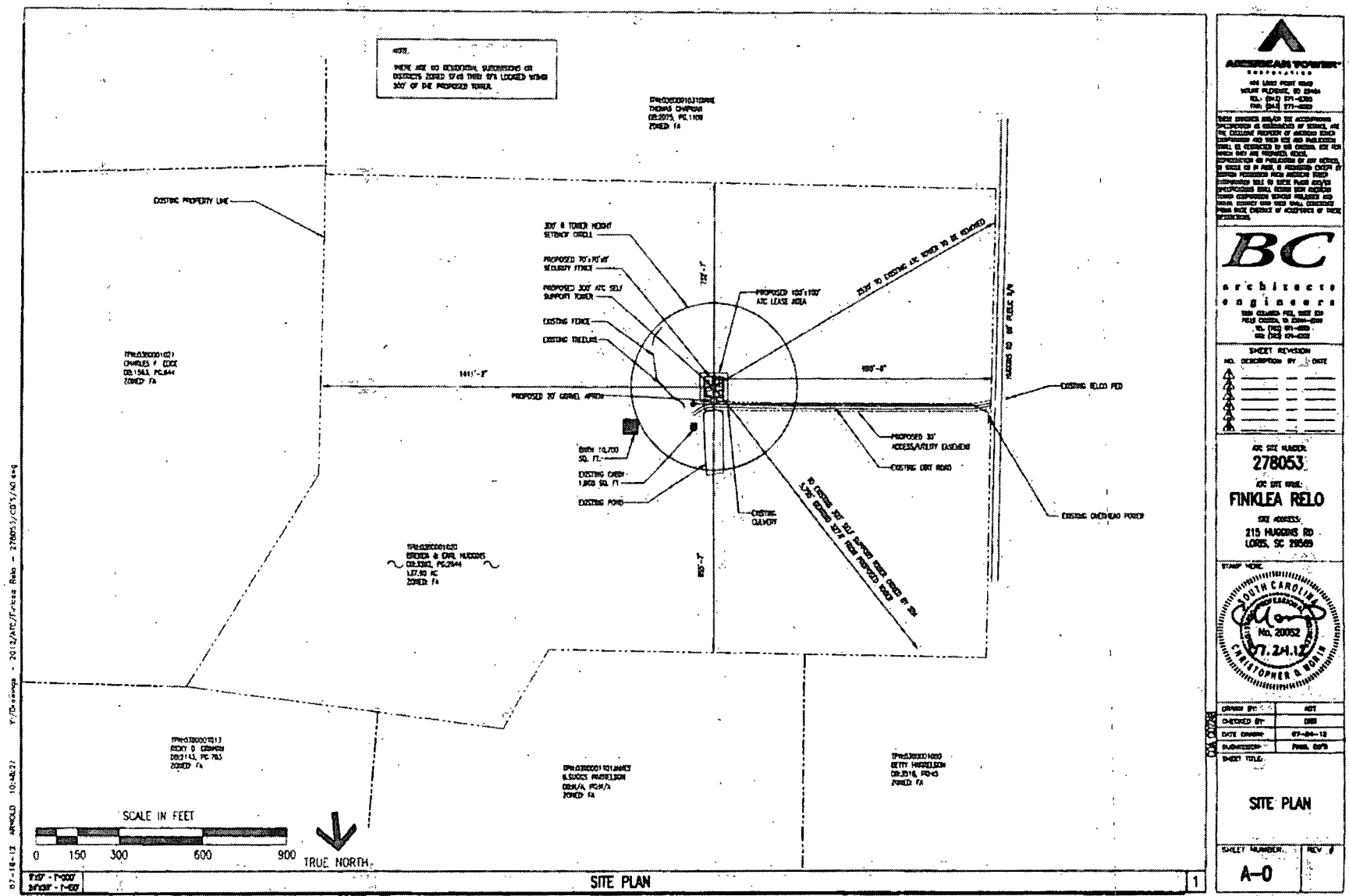
Review Sheet

PROPERTY INFORMATION			
Applicant	American Tower	Telecom Permit #	12-09-001
Tax Map (TMS) #	098-00-01-020	County Council District #	J. Prince
Site Location	ATC 278053 Located off W. Hwy 9 Bus and on Huggins Road	Staff Recommendation	Approval
Property Owner Contact	Steve Vandran, American Tower	Size (in acres) of Request	.25ac

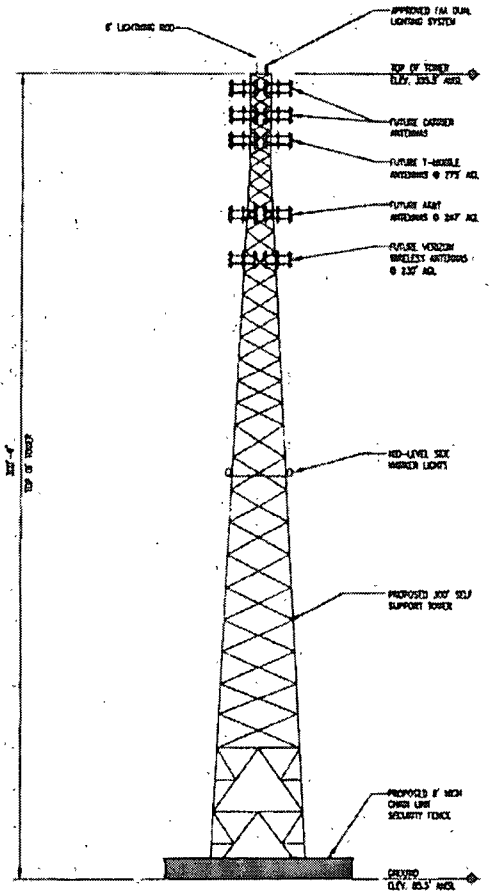
REVIEW CRITERIA		
Zoning District	Tower Height	Tower Type
Forest Agriculture (FA)	300 ft	Self Support Tower
Proximity of tower to residential structures and zoning district boundaries		
The site is surrounded by FA zoned property. There is a cabin within the fall zone, however the property owner is aware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

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


COUNTY COUNCIL
DISTRICTS
1
2
3
4
5
6
7
8
9
10
11
Telecommunications Tower Location
Traffic Station Location Map
N
W
E
S
FULTON RD
WEST HARRELSON RD
Mt. Paul Prince
129.9 total acres
SF-10
MT ZION RD
CLEARPOND RD
Jody Prince
FA
MSF-10
SF-6
Parcel TMS # 038-00-01-020


NOTE:
THERE ARE NO RESIDENTIAL SUBDIVISIONS OR DISTRICTS ZONED 'R' OR THEIR 'PD' LOCATED WITHIN 300' OF THE PROPOSED TOWER.
EXISTING PROPERTY LINE
300' ± TOWER HEIGHT SETBACK CIRCLE
PROPOSED 70'x 70' x 8' SECURITY FENCE
PROPOSED 300' AFC SELF SUPPORT TOWER
EXISTING FENCE
EXISTING TREELINE
PROPOSED 100'x100' AFC LEASE AREA
25'± TO EXISTING AFC TOWER TO BE REMOVED
PROPOSED 20' GRAVEL APRON
EXISTING RELCO POLE
PROPOSED 30' ACCESS/UTILITY EASEMENT
EXISTING DIRT ROAD
EXISTING OVERHEAD POWER
BARN 10,700 SQ. FT.±
EXISTING CABIN 1,900 SQ. FT.
EXISTING POND
EXISTING CULVERT
30 EXISTING 300' SELF SUPPORTED TOWER GRADED AT 304' ± ON GRAVEL 30'± WIDE PROPOSED ROAD
EXISTING 30' PUBLIC R/W
SCALE IN FEET
0 150 300 600 900
TRUE NORTH
SITE PLAN
1
AMERICAN TOWER CORPORATION
BC architects engineers
SHEET REVISION
NO. DESCRIPTION BY DATE
ATC SITE NUMBER:
278053
ATC SITE NAME:
FINKLEA RELO
SITE ADDRESS:
215 HUGGINS RD
LORIS, SC 29569
STAMP HERE
SOUTH CAROLINA
No. 20052
07.24.12
CHRISTOPHER R. BORIN
DRAWN BY: AGT
CHECKED BY: CRB
DATE DRAWN: 07-24-12
PLOT DATE: Printed, 07/18
SHEET TITLE:
SITE PLAN
SHEET NUMBER: A-0
REV: 0

ROA_0039



NOTE:
PROPOSED TOWER SHALL HAVE A GALVANIZED FINISH

SCALE IN FEET

0 10 20 40 60

1"=40'

TOWER ELEVATION

1

AMERICAN TOWER CORPORATION

BC architects engineers

SHEET REVISION

NO.	DESCRIPTION	BY	DATE

ATC SITE NUMBER:
278053

ATC SITE NAME:
FINKLEA RELO

SITE ADDRESS:
215 HUGGINS RD
LORIS, SC 29569

STAMP HERE:

SOUTH CAROLINA
REGISTERED
No. 20052
7.24.12
CHRISTOPHER D MORIN

DRAWN BY:	AGT
CHECKED BY:	CDM
DATE DRAWN:	07-06-12
SUBMISSION:	FINAL CDR'S

SHEET TITLE:
TOWER ELEVATION

SHEET NUMBER: A-2

REV: 0

07-18-12 APOLO 16:23:58 Y:\Projects - 2012\ATC\Finklea Pole - 278053\CD'S\A2.dwg

SYMBOL	QTY	BOTANICAL NAME	COMMON NAME	HEIGHT @ PLANTING	HEIGHT @ MATURITY	CALIPER SIZE @ MATURITY	SPACING
○	91	ILEX x NELLIE R. STEVENS	NELLIE R STEVENS HOLLY	5'-6" (MIN.)	20' MIN.	1"-1.5"	15'
	20	ILEX X EDWARD J. STEVENS	EDWARD J. STEVENS HOLLY	5'-6" (MIN)	25' MIN.	1"-1.5"	15'

PROPOSED NELLIE R. STEVENS HOLLY (TYP.)

PROPOSED EDWARD J STEVENS HOLLY (TYP.)

PROPOSED 70'x70'±S SECURITY FENCE

PROPOSED 200' A/C SELF SUPPORT TOWER

FUTURE 4'-3 1/2" x 8'-10" SHARED GENERATOR PAD

PROPOSED 8'-0" X/C H-FRAME W/ 6 DISC. 800A METER PAN & TELCO DEMARC CABINET AND LIGHT CONTROL EQUIPMENT

FUTURE SHARED A/C H-FRAME

TBM: NAIL IN PP ELEV 23.91

PROPOSED 6'-0" HIGHT SOLID CRYSTALLE PRIVACY AND 8'-0" STONE WITHIN FENCED AREA

GRUB AND REMOVE ALL ASPHALT, TREES AND VEGETATION WITHIN FENCED AREA

1'-0" STONE APRON AROUND FENCED AREA

PROPOSED 11'-0" GATE

PROPOSED 20' GRAVEL APRON

PROPOSED 24"x12" RCP CULVERT

OHP — OHP — OHP — OHP — OHP — OHP — OHP

EXISTING DIRT ROAD

EXISTING CULVERT (12" CPP)

PROPOSED 20' ACCESS/UTILITY EASEMENT

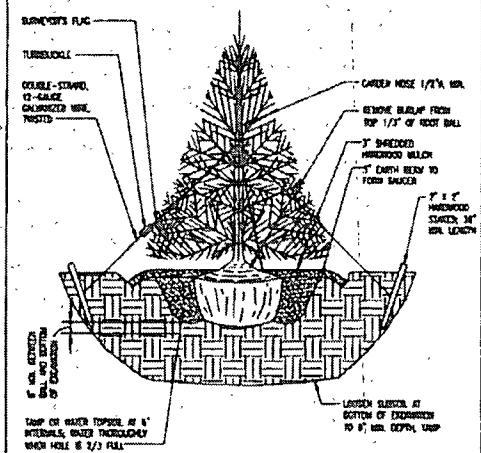
EXISTING POND

SCALE IN FEET

0 5 10 20 30

TRUE NORTH

1"=10' LANDSCAPING PLAN 1



NOTES:

1. STEVENS HOLLY TREE SHALL REACH A MINIMUM HEIGHT OF 20 FEET AT MATURITY.
2. STEVENS HOLLY TREE SHALL BE PLANTED @ 15' ON CENTER IN THE BUFFER AROUND THE FENCED COMPOUND

N.T.S. TREE INSTALLATION DETAIL 2

ARES CANTOWER corporation
420 LONG POINT ROAD
MOUNT PLEASANT, SC 29464
TEL: (843) 971-6355
FAX: (843) 971-6992

BC architects engineers
1508 COLEMAN BLVD, SUITE 200
MOUNT PLEASANT, SC 29464
TEL: (843) 971-6355
FAX: (843) 971-6356

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SHEET REVISION

NO.	DESCRIPTION	BY	DATE

ATC SITE NUMBER: 278053

ATC SITE NAME: FINKLEA RELO

SITE ADDRESS: 219 HUGGINS RD LORIS, SC 29569

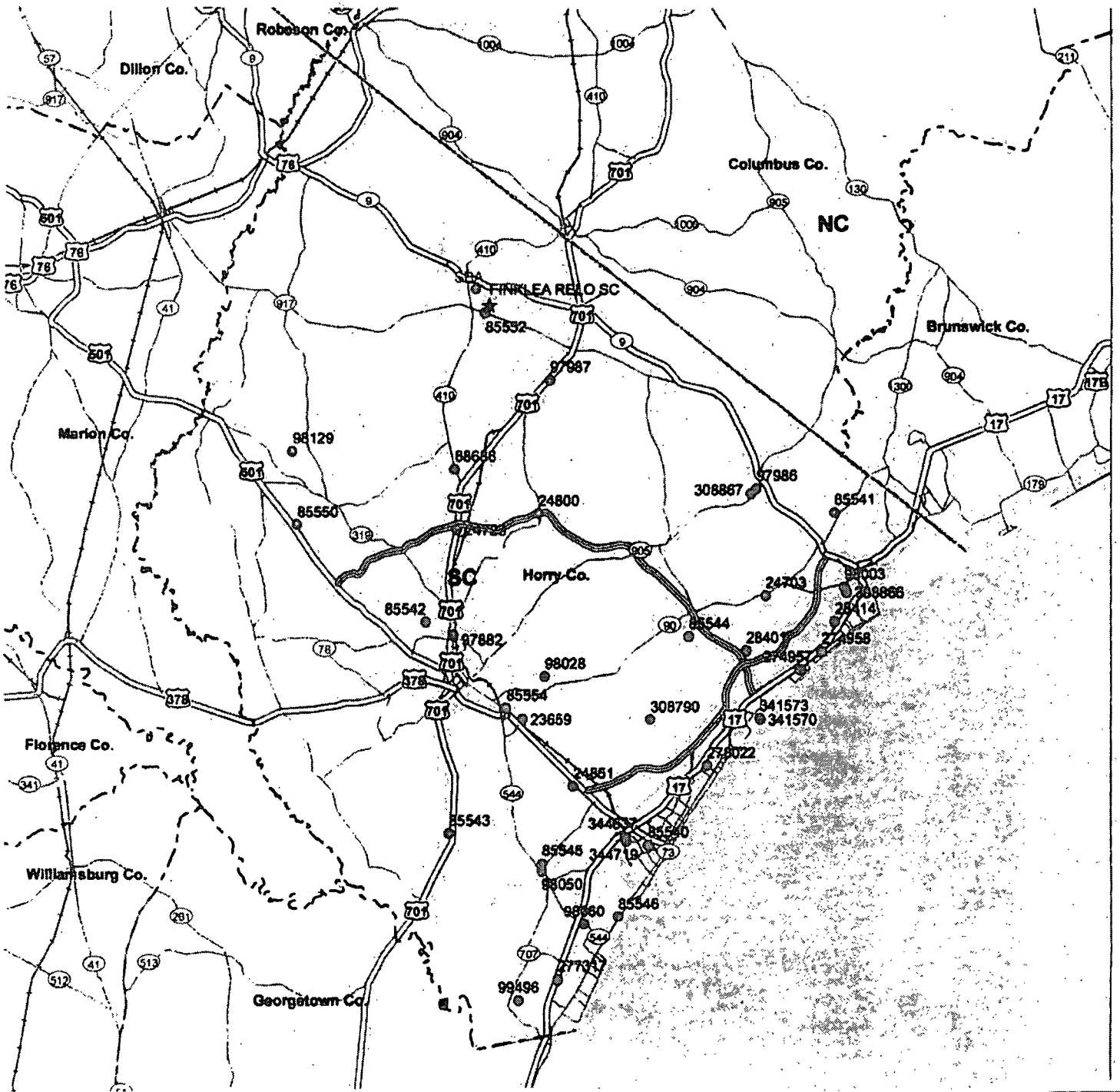
STAMP HERE: SOUTH CAROLINA PROFESSIONAL ENGINEER No. 20052 07.24.12 CHRISTOPHER D. MAIN

DRAWN BY:	AGT
CHECKED BY:	DMB
DATE DRAWN:	07-24-12
SUBMISSION:	FINAL CD'S

SHEET TITLE: LANDSCAPING PLAN

SHEET NUMBER: L-1 REV: 0

6 12 ARNOLD 15-33+1 V:/Drawings - 2012/ATC/Finklea Rela - 278053/CD'S/LI.dwg



AMERICAN TOWER®

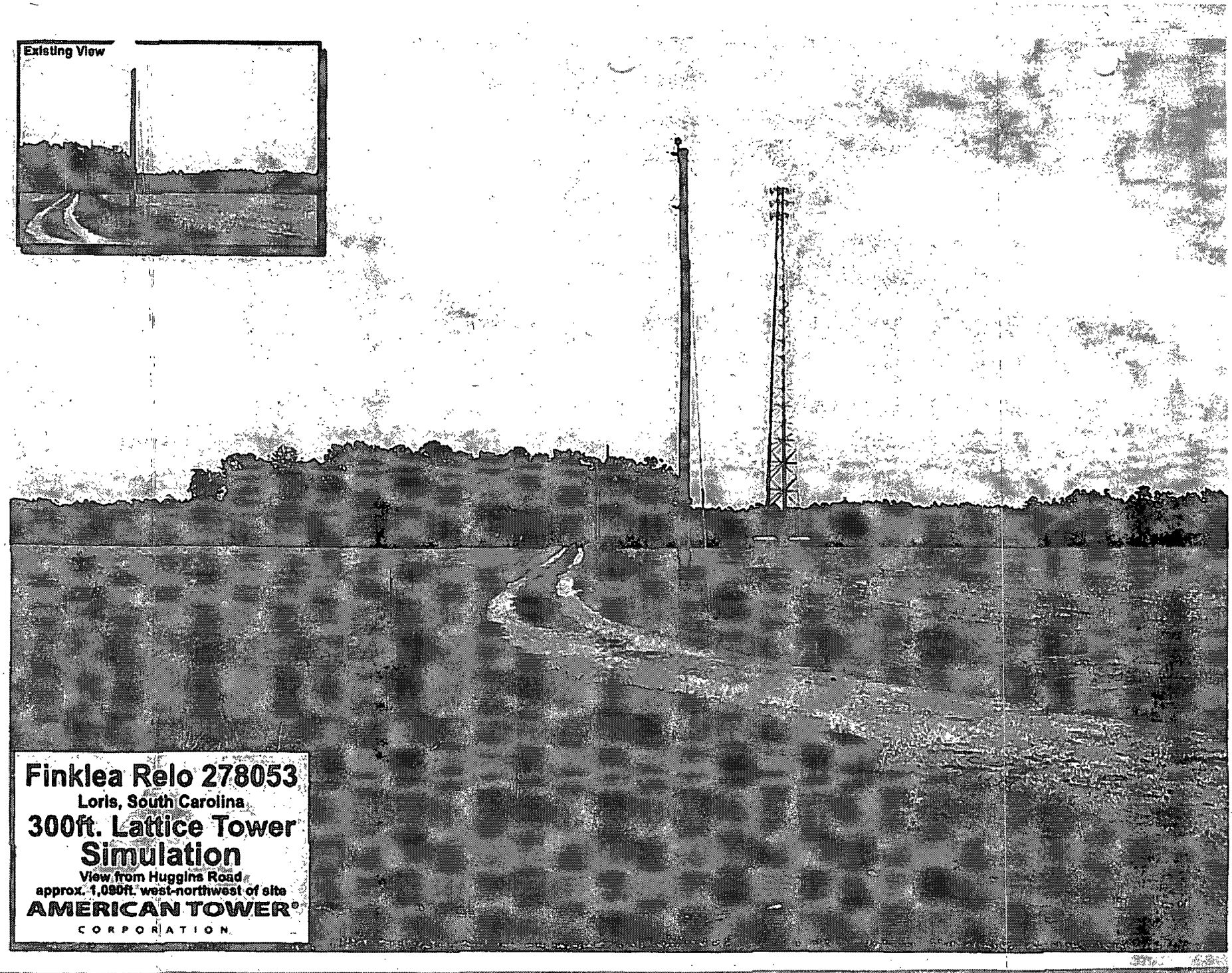
ATC Marketable Assets in Horry County, SC

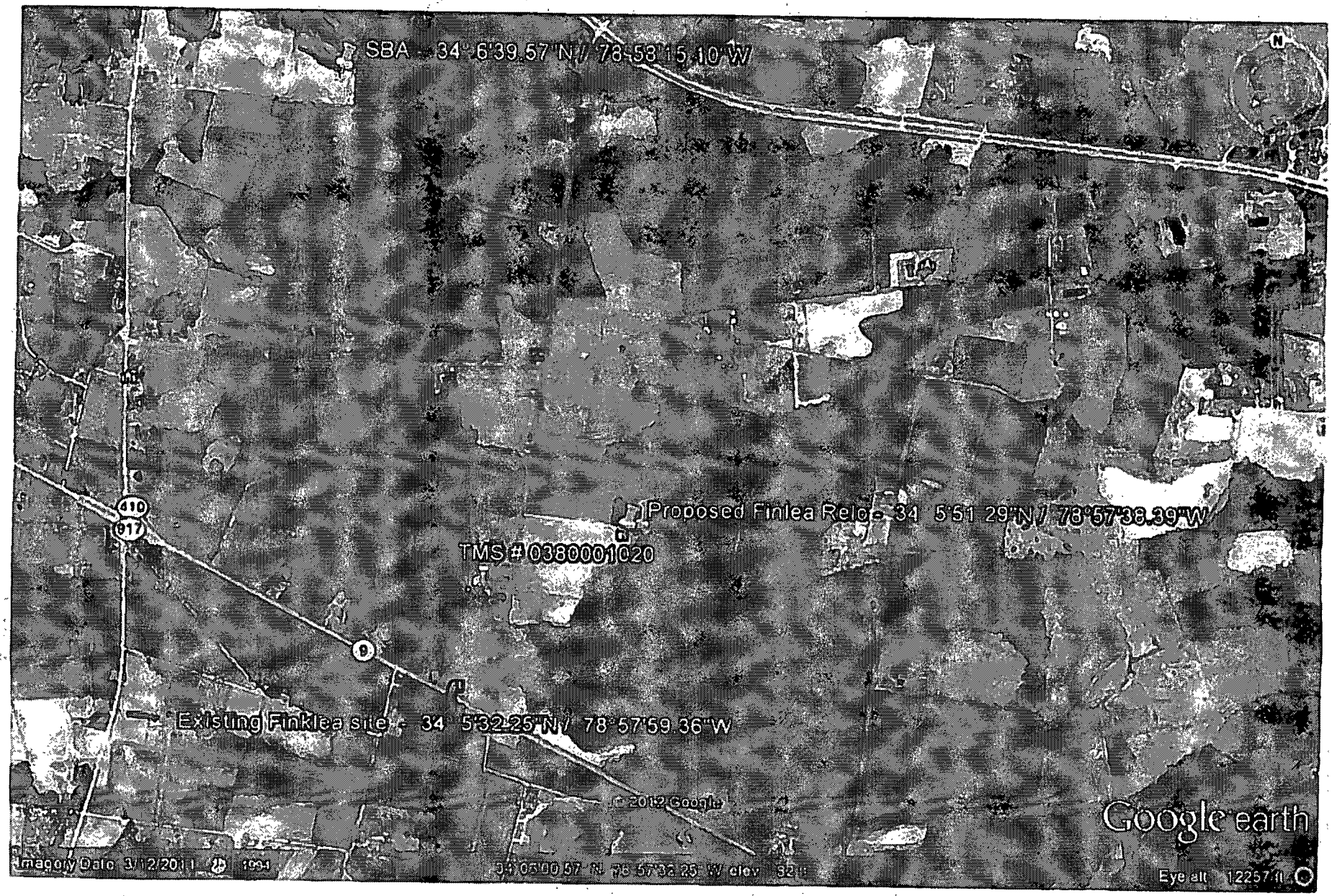
N

1 in = 7 miles

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

ROA_0042


Existing View
Finklea Relo 278053
Loris, South Carolina
300ft. Lattice Tower
Simulation
View from Huggins Road
approx. 1,090ft. west-northwest of site
AMERICAN TOWER®
CORPORATION


SBA - 34° 6'39.57"N / 78°58'15.10"W
Proposed Finlea Relo - 34° 5'51.29"N / 78°57'38.39"W
TMS # 0380001020
Existing Finklea site - 34° 5'32.25"N / 78°57'59.36"W
410
917
N
Imagery Date: 3/12/2011
© 2012 Google
Google earth
Eye alt 12257 ft

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)))	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
TRISTAR INVESTORS, INC. MINERVA REALTY, LLC, and ANGELINE JOHNSON, Plaintiffs, vs. THE HORRY COUNTY COUNCIL; and AMERICAN TOWER CORPORATION, Defendants.	)))))))))))	Civil Action No. 2012-CP-26-8652 **VERIFIED ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' ORIGINAL COMPLAINT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

American Towers, LLC ("American Tower"), erroneously referred to as American Tower Corporation and answering the Complaint of Plaintiffs TriStar Investors, Inc. ("TriStar"), Minerva Realty, LLC ("Minerva") and Angeline D. Johnson ("Ms. Johnson"), would respectfully show the Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted, denied or explained is denied.

FOR A SECOND DEFENSE AND BY WAY OF ANSWER

2. Answering the allegations of Paragraph 1, Paragraph 1 states Plaintiffs' characterization of their case, to which no response is required. To the extent that a response is required, American Tower denies the allegations of Paragraph 1.

3. Answering the allegations of Paragraph 2, American Tower admits that the Horry County Council (the "Council") granted approval for the construction of a cell tower, but denies the remaining allegations of Paragraph 2.

4. Answering the allegations of Paragraph 3, American Tower admits that TriStar purchased an easement from Ms. Johnson, but lacks knowledge as to the terms of TriStar's transaction with Ms. Johnson and denies Plaintiffs' characterization of the legal significance of the transaction.

5. American Tower denies the allegations contained in Paragraph 4.

6. American Tower admits the allegations contained in Paragraph 5.

7. Answering the allegations of Paragraph 6, American Tower admits that Minerva is a Delaware limited liability company with its principal place of business in Pittsburgh, Pennsylvania, denies that TriStar and Minerva are essentially undistinguishable in South Carolina and lacks knowledge as to the remaining allegations in Paragraph 6 and therefore denies them.

8. American Tower admits the allegations contained in Paragraphs 7-8.

9. Answering the allegations of Paragraphs 9-11; the allegations of Paragraphs 9-10 require a legal conclusion to which no response is required. To the extent that a response is required, American Tower denies the allegations of these Paragraphs.

10. American Tower admits the allegations contained in Paragraph 11.

11. Answering the allegations of Paragraph 12, American Tower admits that it currently operates a cell Tower on Ms. Johnson's property, states that that its lease, including all amendments thereto, and the easement Ms. Johnson granted to TriStar speak for themselves and denies all characterizations of said documents to the extent they are inconsistent with the plain terms of the documents.

12. American Tower admits the allegations of Paragraph 13.

13. Answering the allegations of Paragraph 14, American Tower states that the rights of its tower tenants under its agreements are governed by American Tower's agreements with its tower tenants, which speak for themselves. American Tower denies the remaining allegations of Paragraph 14.

14. Answering the allegations of Paragraph 15, the allegations of Paragraph 15 require a legal conclusion to which no response is required. To the extent that a response is required, American Tower denies that Plaintiffs are entitled to the relief they request in Paragraph 15. Further, American Tower denies that two towers will be constructed within 2 ½ miles of its new tower.

15. American Tower denies the allegations of Paragraph 16.

16. Answering the allegations of Paragraph 17, the allegations of Paragraph 17 require a legal conclusion to which no response is required. To the extent that a response is required, American Tower denies that Plaintiffs are entitled to the relief they request in Paragraph 17. Further, American Tower alleges that it provided Council with all the necessary information for it to make an informed decision relating to its application.

17. American Tower denies the allegations of Paragraph 18.

18. Answering the allegations of Paragraph 19, American Tower admits that the tower it currently operates has effectively served Horry County for 17 years and that the Council granted its request to relocate its tower, but denies the remaining allegations of Paragraph 19.

19. Answering the allegations of Paragraph 20, American Tower admits that on October 16, 2012, the Council granted its request to relocate its tower and that TriStar attended the hearing before the Council, but denies the remaining allegations of Paragraph 20.

20. Answering the allegations of Paragraph 21, Paragraph 21 states Plaintiffs' characterization of the relief they are seeking, to which no response is required. To the extent that a response is required, American Tower denies that the Plaintiffs are entitled to the relief they request in Paragraph 21.

21. Answering the allegations of Paragraph 22, American Tower admits that is involved in litigation with TriStar in Federal Court in Dallas, Texas, but denies the remaining allegations of Paragraph 22.

22. Answering the allegations of Paragraph 23, American Tower admits that it currently pays $760.44 per month for the use of Ms. Johnson's property and affirmatively avers that by disclosing this amount to TriStar and now to the general public through her Complaint, Ms. Johnson is breaching her lease with American Tower. American Tower lacks knowledge sufficient to form a belief as to the truth of Plaintiffs' allegations regarding their calculations of revenue from wireless carriers and the agreement between TriStar and Ms. Johnson and therefore denies said allegations. American Tower denies the remaining allegations of Paragraph 23.

23. Answering Paragraphs 24 and 25, American Tower advised the Council that it sought to relocate the tower because its existing ground lease would not be renewed. TriStar and Ms. Johnson have disputed the validity of a lease amendment that American Tower previously obtained from Ms. Johnson in litigation pending before this court, Case No. 2012-CP-26-2912. Further, American Tower alleges that the wireless carriers have agreed to relocate to the new tower to be constructed by American Tower. Accordingly, American Tower denies the allegations in Paragraphs 24 and 25.

24. American Tower denies the allegations in Paragraph 26.

25. Answering the allegations in Paragraphs 27 and 28, the allegations of Paragraphs 27 and 28 state legal conclusions to which no response is required. To the extent a response is required, American Tower denies the allegations of Paragraphs 27 and 28.

26. Answering the allegations in Paragraphs 29 and 30, the allegations in Paragraphs 29 and 30 state legal conclusions to which no response is required. To the extent a response is required, American Tower denies the allegations of Paragraph 29 and 30.

27. Answering the allegations in Paragraphs 31-36, the allegations in Paragraphs 31-36 state legal conclusions and Plaintiffs' characterization of the proceedings before the Council. To the extent a response is required, American Tower denies the allegations of Paragraphs 31-36.

28. Answering the allegations in Paragraphs 37-41, the allegations in Paragraphs 37-41 state legal conclusions to which no response is required. To the extent a response is required, American Tower denies the allegations of Paragraphs 37-41.

29. Answering Paragraph 42, American Tower states that TriStar's complaint in the federal lawsuit in Dallas, Texas speaks for itself. American Tower denies the remaining allegations of Paragraph 42.

30. Answering Paragraph 43, American Tower admits that it currently has an action pending against TriStar and Ms. Johnson in this court and has filed actions against TriStar in other state courts in which American Tower seeks relief for breaches of its lease agreements and other unlawful conduct by TriStar and TriStar subsidiaries. American Tower denies the remaining allegations of Paragraph 43.

31. American Tower denies the allegations of Paragraphs 44-46.

32. Answering Paragraph 47, American Tower states that the rights of its tower tenants under its agreements are governed by American Tower's agreements, which speak for

themselves. Further, American Tower alleges that its agreements with tower tenants are for the benefit of and enforcement by the wireless carriers. American Tower alleges that its tower tenants have agreed to relocate to the new tower to be constructed by American Tower. American Tower denies the remaining allegations of Paragraph 47.

33. American Tower denies the allegations of Paragraph 48.

34. Answering the allegations of Paragraph 49, American Tower denies that it is relocating its tower as a malicious demonstration and states that any statements that its CEO made to investment analysts speak for themselves.

35. Answering the allegations of Paragraphs 50-53, Paragraphs 50-53 state Plaintiffs' requests for relief. American Tower denies that the Plaintiffs are entitled to the relief they seek in Paragraphs 50-53.

FOR A THIRD DEFENSE

36. Plaintiffs' Complaint fails to state facts sufficient to constitute a claim from which relief can be granted.

FOR A FOURTH DEFENSE

37. Plaintiffs lack standing to pursue the claims asserted in their Complaint.

FOR A FIFTH DEFENSE

38. Plaintiffs' claims are barred by the doctrine of unclean hands.

FOR A SIXTH DEFENSE

39. Plaintiffs' claims are barred by Rules 12(b)(1) and (2) of the South Carolina Rules of Civil Procedure.

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
TRISTAR INVESTORS, INC. MINERVA REALTY, LLC, and ANGELINE JOHNSON, Plaintiffs, vs. THE HORRY COUNTY COUNCIL; and AMERICAN TOWER CORPORATION, Defendants.	)	Civil Action No. 2012-CP-26-8652 **VERIFICATION**

Personally appeared before me, Robert McNiel, who, being duly sworn, says that (s)he is the representative with American Towers, LLC erroneously referred to as American Tower Corporation, the Defendant in the foregoing action; that (s)he has read the foregoing Verified Answer; that the statements contained therein are true to the best of her/his knowledge except those stated to be based upon information and belief, as to which (s)he believes such matters to be true.

Robert J McN

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

KBD (L.S.)
Notary Public for Texas
My commission expires: 9/11/16

KATHERINE BRIDGES DRYDEN
Notary Public, State of Texas
My Commission Expires
September 11, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	CIVIL ACTION NO.: 2012-CP-26-8652
Tristar Investors, Inc., Minverva Realty, LLC and Angeline Johnson,	)	
Plaintiff,	)	**ANSWER OF DEFENDANT THE HORRY COUNTY COUNCIL TO PLAINTIFFS' COMPLAINT**
vs.	)	
The Horry County Council and American Tower Corporation,	)	
Defendants.	)	

The Defendant, the Horry County Council ("Horry County" or "this Defendant"), answering the Plaintiffs' Complaint would respectfully show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter admitted, denied or explained is denied.

2. This Defendant admits so much of Paragraph 1 of the Complaint as alleges that Plaintiffs appeal a decision of Horry County Council and have applied for a temporary restraining order and a preliminary injunction; this Defendant denies that Plaintiffs are entitled to such relief; the remaining allegations thereof are denied.

3. This Defendant admits so much of Paragraph 2 of the Complaint as alleges that Horry County Council granted Defendant American Tower Corporation ("American Tower") approval to construct a cell tower and further responds that said approval was in response to American Tower's request for relocation permit which would require removal of its current cell tower. This Defendant is without knowledge or information sufficient to form a belief as to the truth of

the allegations of the second sentence of Paragraph 2 of the Complaint and therefore denies same.

4. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Complaint and therefore denies same.

5. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of the first and second sentences of Paragraph 4 of the Complaint and knows of no facts having been misrepresented to it by American Tower. The remaining allegations of Paragraph 4 of the Complaint are denied.

6. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 5 and 6 of the Complaint.

7. This Defendant admits the allegations of Paragraph 7 of the Complaint upon information and belief.

8. In response to the allegations of Paragraph 8 of the Complaint, this Defendant responds that Horry County Council is the elected body of representatives for Horry County, a body politic and corporate located in Horry County, South Carolina, which performs administrative, legislative and other such functions as have been vested in it by the State of South Carolina. The remaining allegations of Paragraph 8 call for legal conclusions to which no response is required.

9. Paragraph 9 of the Complaint calls for a legal conclusion to which no response is required.

10. In response to the allegations of Paragraph 10 of the Complaint, this Defendant denies that it has wrongfully issued a permit to American Tower; the remaining allegations thereof call for legal conclusions to which no response is required.

11. Paragraph 11 of the Complaint calls for a legal conclusion to which no response is required.

12. This Defendant admits so much of Paragraph 12 of the Complaint as alleges that American Tower currently operates a cell tower on Ms. Johnson's property. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 12, including footnotes 1 and 2.

13. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 13 and 14 of the Complaint.

14. The allegations of Paragraph 15 of the Complaint call for a legal conclusion to which no response is required; to the extent that a response is required, Horry County denies that Plaintiffs are entitled to the relief they request and denies any inference that the Horry County ordinance prohibited Horry County from approving a relocation of American Tower's current tower location; in further response thereto, Horry County craves reference to Appendix B, Article XVI, of its Code of Ordinances, and Horry County Council Resolution R-73-12.

15. This Defendant admits so much of Paragraph 16 of the Complaint as alleges that American Tower's application request for a relocation permit was submitted to Horry County Council on October 16, 2012, and Horry County Council approved the application as set forth in Resolution R-73-12; this Defendant denies the remaining allegations of Paragraph 16 of the Complaint.

16. The allegations of Paragraph 17 of the Complaint call for a legal conclusion to which no response is required; this Defendant craves reference to Appendix B, Article XVI, Horry County Code of Ordinances, in further response hereto, and further responds that American Tower

provided Horry County with all required information for Horry County to make a decision on the relocation application and all allegations and inferences to the contrary are denied.

17. Defendant Horry County denies the allegations of Paragraph 18 of the Complaint upon information and belief.

18. Defendant Horry County admits so much of Paragraphs 19 of the Complaint as alleges that Horry County granted American Tower's request to relocate its tower and required that the existing tower be removed within 120 days of completion of the new tower; this Defendant also admits that the existing tower has been in service for over 17 years. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 19 and denies same.

19. This Defendant admits so much of Paragraph 20 of the Complaint as alleges that it approved American Tower's request for a relocation permit on October 16, 2012; that TriStar was in attendance at the October 16, 2012, Horry County Council meeting; and that Tri-Star was allowed an opportunity to explain its position in this matter; the remaining allegations of Paragraph 20 are denied.

20. Answering the allegations of Paragraph 21 of the Complaint, Paragraph 21 states Plaintiffs' characterization of the relief they are seeking, to which no response is required. To the extent that a response is required, Defendant Horry County denies that Plaintiffs are entitled to the relief requested in said paragraph.

21. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of the first and second sentences of Paragraph 22 of the Complaint; the remaining allegations of Paragraph 22 of the Complaint are denied.

22. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23 of the Complaint and therefore deny same.

23. In response to the allegations of Paragraph 24 of the Complaint, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations thereof and therefore denies same.

24. In response to the allegations of Paragraph 25 of the Complaint, American Tower advised this Defendant that it sought to relocate the tower because its existing ground lease would not be renewed. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 25 of the Complaint.

25. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 26 of the Complaint and therefore denies same.

26. This Defendant denies the heading of Section VI of the Complaint (entitled "The Council Abused its Discretion").

27. Paragraphs 27 and 28 of the Complaint, including Footnote 3, call for a legal conclusion to which no response is required.

28. Paragraphs 29 and 30 of the Complaint call for legal conclusions to which no response is required. To the extent a response is required, this Defendant denies the allegations of Paragraph 29 and 30, including all subparts thereof.

29. The allegations of Paragraph 31, 32, 33, 34, 35 and 36 of the Complaint call for legal conclusions and contain Plaintiffs' characterization of the proceedings before this Defendant; accordingly, no response is required. To the extent a response is required, Defendant Horry County denies the allegations of these paragraphs.

30. Paragraph 37 of the Complaint calls for legal conclusions to which no response is required; in further response thereto, this Defendant denies that American Tower's permit application was granted in contravention of the Horry County ordinances and denies that injunctive relief is appropriate in this matter.

31. Paragraphs 38, 39, 40 and 41 of the Complaint, including the heading of Section VII (entitled "Tristar and Ms. Johnson will be Irreparably Harmed by the Council's Decision") call for legal conclusions to which no response is required; to the extent a response is required, Horry County denies the allegations of Paragraphs 38, 39, 40 and 41 of the Complaint.

32. This Defendant denies so much of Paragraph 42 of the Complaint as alleges that Horry County failed to properly apply the Horry County ordinances and all inferences contained therein; this Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations thereof and therefore denies same.

33. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 43, 44 and 45 of the Complaint.

34. This Defendant denies that it has abused its discretion as alleged in Paragraph 46 of the Complaint and denies all remaining allegations thereof.

35. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 47, including Footnote 4, of the Complaint and therefore denies same.

36. The first sentence of Paragraph 48 of the Complaint calls for a legal conclusion to which no response is required; this Defendant is without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 48 of the Complaint.

37. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 49 of the Complaint.

38. Paragraphs 50, 51, 52 and 53 of the Complaint state Plaintiffs' request for relief. Defendant Horry County denies that Plaintiffs are entitled to the relief they seek in these paragraphs and therefore denies same.

FOR A SECOND DEFENSE

39. This Defendant realleges the allegations of Paragraphs 1 through 38 above as fully as if set forth herein verbatim.

40. Plaintiffs' Complaint fails to state facts sufficient to constitute a claim for which relief may be granted

FOR A THIRD DEFENSE

41. This Defendant realleges the allegations of Paragraphs 1 through 40 above as fully as if set forth herein verbatim.

42. Plaintiffs lack standing to pursue the claims asserted in their Complaint.

FOR A FOURTH DEFENSE

43. This Defendant realleges the allegations of Paragraphs 1 through 42 above as fully as if set forth herein verbatim.

44. Plaintiffs' claims are barred by the doctrine of unclean hands.

FOR A FIFTH DEFENSE

45. This Defendant realleges the allegations of Paragraphs 1 through 44 above as fully as if set forth herein verbatim.

46. The Horry County Council's decision in this matter should be affirmed because it is neither arbitrary nor capricious, is reasonably related to a lawful purpose and the Horry County Council has not abused its discretion in its decision in this matter.

WHEREFORE, having fully answered the allegations of the Complaint herein, this Defendant requests that judgment be entered in its favor and the action dismissed and for such other and further relief as the Court may deem to be just and proper.

THOMAS & BRITTAIN, P.A.

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December 14, 2012

Myrtle Beach, South Carolina

THE FOLLOWING IS #5 ON THE AGENDA FOR THE TUESDAY NIGHT MEETING OF THE HORRY COUNTY COUNCIL ON OCTOBER 16, 2012. IT IS RESOLUTION R-73-12, A PUBLIC HEARING TO APPROVE THE PERMIT TO LOCATE A TELECOMMUNICATIONS TOWER ON HUGGINS ROAD OFF OF WEST HIGHWAY 9 BUSINESS (MR. JODY PRINCE). MR.JONATHAN YATES AND MR. JASON GROSSCLOSE ARE REPRESENTING AMERICAN TOWER COMPANY.

COUNCIL MEMBERS PRESENT WERE AS FOLLOWS:

H. TOM RICE, CHAIRMAN
HAROLD WORLEY
MARION D. FOXWORTH, III
PAUL D. PRINCE, JR.
JAMES R. FRAZIER
W. PAUL PRINCE
AL ALLEN
BRENT J. SCHULZ
ROBERT P. GRABOWSKI
JODY PRINCE

CHAIRMAN: NEXT ITEM IS RESOLUTION R-73-12, A PUBLIC HEARING TO APPROVE A PERMIT TO LOCATE A TELECOMMUNICATIONS TOWER TO BE LOCATED ON HUGGINS ROAD OFF WEST HIGHWAY 9 BUSINESS. MR. JODY PRINCE. SOMEBODY WANT TO BRIEF US? I HAVE A MOTION AND A SECOND. MS. CARTER.

MS. JANET CARTER: YES. THIS IS AN APPLICATION FOR A 300 FOOT SELF-SUPPORTING TOWER LOCATED ON HUGGINS ROAD, JUST OFF HIGHWAY 9 BUSINESS IN THE FINKLEA COMMUNITY. THE APPLICANT IS PROPOSING TO RELOCATE AN SELF-EXISTING OLD TOWER THAT'S LESS THAN A MILE, I BELIEVE, FROM THE EXISTING TOWER. THE ADJACENT USES ARE MOSTLY FARM AND WETLANDS. THE PARCEL IS SURROUNDED BY WOODLANDS, WOODED WETLANDS AND FIELDS. THERE ARE NO TREES BETWEEN THE TOWER AND HUGGINS ROAD. AS I SAID, THE DESIGN OF THE TOWER IS SELF-SUPPORTING. THE APPLICANT WILL PROPOSE TO LANDSCAPE THE SITE AS REQUIRED BY THE ORDINANCE. THE APPLICANT IS, HOWEVER, REQUESTING A CO-LOCATION RESOLUTION BECAUSE OF THEIR EXISTING TOWER, WHICH IS WITHIN THE TWO AND A HALF MILE RADIUS AND THERE IS ANOTHER TOWER WITHIN THE TWO AND A HALF MILE RADIUS

THAT IS CURRENTLY NOT SERVING ANY CELLULAR ANTENNAS.

MR. CHAIRMAN: THANK YOU, MS. CARTER. ANYBODY ELSE HAVE ANY QUESTIONS OF MS. CARTER BEFORE WE PROCEED?

MR. ALLEN: I THINK MS. CARTER WANTS TO TALK ABOUT MAYBE AN AMENDMENT HERE.

MS. CARTER: YES. IF WE GET TO THAT POINT, I WOULD RECOMMEND THAT WE HAVE YOUR STANDARD RESOLUTION IN FRONT OF YOU AUTHORIZING US TO ISSUE THE PERMIT, BUT IN THIS CASE, SINCE THEY HAVE AN EXISTING TOWER IN CLOSE PROXIMITY TO AN OLD TOWER, I WOULD SUGGEST THAT WE ADD THE REQUIREMENT THAT THE EXISTING TOWER BE REMOVED WITHIN A HUNDRED AND TWENTY DAYS OF FINAL APPROVAL OF THE NEW TOWER IF COUNCIL SEES FIT TO GRANT THE APPLICATION.

MR. CHAIRMAN: THANK YOU, MS. CARTER. WHO'S THE APPLICANT FOR THIS PERMIT?

MS. CARTER: IT'S THE AMERICAN TELEPHONE COMPANY. THANK YOU, SIR.

MR. CHAIRMAN: THANK YOU, SIR. STATE YOUR NAME FOR THE RECORD AND IF YOU WANT TO MAKE A LITTLE PRESENTATION ON THIS.

MR. YATES: THANK YOU VERY MUCH, MR. CHAIRMAN.

JONATHAN YATES ON BEHALF OF AMERICAN TOWER AND WITH ME, LET ME ALSO, IF I MAY, INTRODUCE JASON GROSSCLOSE FROM AMERICAN TOWER. OUR PROPERTY OWNER, MS. BRENDA HUGGINS IS WITH US AND HER FRIEND, FRANCES POWELL. WE KNOW THIS IS A BIT OF AN INTERESTING ONE BEFORE YOU BECAUSE I'VE BEEN DOING TOWERS SINCE 1995. THIS IS THE FIRST ... ACTUALLY THE SECOND TIME. THE FIRST TIME I HAD TO MOVE A TOWER, I HAD A TOWER IN DOWNTOWN CHARLESTON AND THEY PUT THAT BIG OLD BRIDGE IN. SO, I HAD TO MOVE IT A COUPLE STREETS OVER TO GET AWAY FROM THE RAVENEL BRIDGE. WHAT WE HAVE IN THIS SITU-ATION IS, WE HAVE AN EXISTING TOWER THAT WAS BUILT IN 1996, I THINK IT WAS BY VANGUARD. THEY SOLD IT IN 1999 TO SUNCOM AND WE BOUGHT IT IN 2001. MOVING THE BALL FORWARD, THIS TOWER PRESENTLY HAS THREE CARRIERS ON IT TO COVER THE FINKLEA COMMUNITY. ON THE TOP OF THE TOWER, YOU'VE GOT T-MOBILE, WHICH IS THE SUCCESSOR TO SUNCOM. YOU HAVE HORRY TELEPHONE COMPANY AND YOU HAVE VERIZON. AMERICAN TOWER HAS BEEN UNABLE ... AND I THINK IT'S ... AND ONE THING I WANT TO POINT OUT, I STARTED IN THIS BUSINESS IN 1995 BUILDING TOWERS. WE'VE

COME A LONG WAY SINCE THEN. THIS IS A PRIME EXAMPLE OF A TOWER, NOT THE EXISTING TOWER, IT DOESN'T MEET THE NEW ARTICLE 16 REQUIREMENTS NOR DO I THINK IT WOULD. I THINK THAT PASSES MUSTER UNDER ARTICLE 7 REQUIREMENTS FOR COUNTY COUNCIL'S APPROVAL. WE WENT OUT TO FIND A BETTER SITE, AND IN THAT SITE ... I FOUND IN THE PAST FIFTEEN OR SEVENTEEN YEARS, THE BEST SITE I EVER HAD. MS. BRENDA TOLD US THAT IT WAS THE BEST AND WE LISTENED TO HER. WE'VE BEEN ABLE TO RELOCATE THE EXISTING TOWER. IF YOU COME DOWN THE HIGHWAY, IT'S LITERALLY FIFTY-FIVE FEET OFF THE ROAD. THAT'S NOT HOW WE BUILD TOWERS TODAY. NOT HOW THE COUNTY WOULD ALLOW US TO DO IT. I DON'T THINK ANY COUNTY IN THE STATE WOULD ALLOW IT. MS. BRENDA HAS A HUNDRED AND THIRTY-SEVEN ACRE PROPERTY. THIS IS A PIECE OF PROPERTY SHE AND HER HUSBAND, EARL, BOUGHT ABOUT FORTY YEARS AGO. FIRST EARL, AND NOW HIS SON, CAMERON, FARMED IT. THEY ORIGINALLY FARMED IT FOR TOBACCO. NOW IT'S SOYBEANS AND CATTLE. MS. BRENDA WAS VERY GRACIOUS WITH US. SHE'S ALLOWING US, VERSES THE TOWER WE'RE GONNA TAKE DOWN, WHICH IS FIFTY-FIVE FEET OFF THE ROAD,

MS. BRENDA, WHO LIVES ACROSS THE STREET, IT'S GONNA ALLOW US TO BE ABOUT 999 FEET OFF HUGGINS ROAD. IT WOULD BE 1411 FEET TO THE REAR OF THE PROPERTY. 955 TO THE NORTH SIDE AND 732 TO THE SOUTH SIDE. VERY RARELY DO I EVER GET TO HAVE THIS KIND OF SETBACK QUOTIENT. MS. BRENDA'S PROPERTY, LIKE EVERYTHING AROUND IT, IS ZONED FA. SO, WE'RE SURROUNDED BY THE FA ZONING. AMERICAN TOWER WILL COME IN ... WE COME IN AND FENCE A SEVENTY FOOT BY SEVENTY FOOT AREA. WE DO AN EIGHT FOOT CHAIN LINK FENCE. WE PUT AN EXTRA THREE FEET .... EXCUSE ME. ACTUALLY ONE FOOT, THREE STRANDS OF BARRED WIRE, I THINK FOR AN ANTI-CLIMBING DEVISE. WE'RE GONNA COME BACK AROUND THE TOWER AND WE'RE GOING TO PUT IN 111 TREES. WE SELECTED TWO SPECIES THAT WE KNOW WORK VERY WELL HERE IN HORRY COUNTY. THE GOAL OF THESE TREES IS TO GET UP QUICK AND THICK. WE'RE GONNA PUT IN 91 MELLIE R. STEVENS HOLLIES. WE'RE GONNA PUT IN 20 EDWARD J. STEVENS HOLLIES. SO, WE'LL COME BACK, WE PUT THE TOWER IN AND FENCE IT. WE'LL MOVE THE THREE CARRIERS OVER. IN ADDITION, THOUGH, AND WE'RE IN A DIFFERENT PLACE. THIS IS A 300

FOOT TOWER JUST LIKE THE OLD ONE. IT'S THE SAME HEIGHT AS THE OLD ONE AND WE'RE GONNA ... ON THIS TOWER, T-MOBILE WILL BE AT 270 FEET. HORRY TELEPHONE WILL BE AT 240 SOME FEET. VERIZON WILL BE AT 230, AND THAT LEAVES US TWO ADDITIONAL SPACES UP NEAR THE TOP FOR ANY ADDITIONAL CARRIER THAT MIGHT WANT TO CO-LOCATE. SAME THING DOWN ON THE COMPOUND. WE'VE SITUATED THE BUILDINGS WHERE T-MOBILE, VERIZON AND HORRY TELEPHONE WILL MOVE THEIR EQUIPMENT AND WE'VE RESERVED TWO OTHER SPOTS FOR ANY OTHER CARRIER COMING IN TO THE MARKET. IF YOU LOOK AT THIS TOWER, YOU LOOK AT THE SITE, THIS IS SOMETHING I WISH I GOT TO DO MANY YEARS AGO. VERY RARELY DO I HAVE A HUNDRED AND THIRTY-SEVEN ACRE PROPERTY TO WORK WITH, AND VERY RARELY DO I HAVE A LANDLORD LIKE MS. BRENDA WHO LET US PLACE IT, NOT IN THE CORNER OF THE PROPERTY, NOT UP ON THE STREET, BUT ALMOST IN THE MIDDLE OF THE PROPERTY. CAMERON WILL BE ABLE TO WORK AROUND THIS WITH HIS FARMING IN TERMS OF THE REQUIRE-MENTS OF THE COUNTY. WE WENT THROUGH ARTICLE 16 AND WE SUBMITTED WHERE WE FEEL WE MEET ALL THE ARTICLE 16 REQUIREMENTS, AND AGAIN,

LOOKING AT ARTICLE 7 FOR PERMANENT APPROVAL BY THIS BODY. AGAIN, WE FEEL WE DID MORE THAN RIGHT. LOOKING AT THE HEIGHT, 300 FEET JUST LIKE THE OLD ONE. LOOKING AT WHAT WE TRIED TO DO WITH THE DESIGN TO MAKE IT AS NON-OBTRUSIVE AS POSSIBLE. WE WENT WITH A SELF-SUPPORT TOWER VERSUS A GUIDE. WE HAVE HAD THIS REVIEWED BY THE FAA. THEY WILL REQUIRE LIGHTING. HOWEVER, WITH AMERICAN TOWER, WE USE AN UPSCALE LIGHTING SYSTEM CONSISTING OF A DAYLIGHT AND NIGHT RED SYSTEM. WHAT DOES ALL OF THAT MEAN? THE EFFECT ON THE GROUND IS ABOUT EQUIVALENT TO A SIXTY WATT PATIO BULB. WE FINISH THE TOWER IN A GALVANIZED GRAY FINISH, WHICH IS NON-REFLECTIVE. IN THIS CLIMATE IT DULLS UP PRETTY QUICKLY, ENDS UP WITH A LIGHT GRAY PATINA, NON-REFLECTIVE. THERE'S NO GLARE. PURSUANT TO THE HORRY COUNTY ORDINANCE, WE WILL, AT THE HUNDRED AND FIFTY FOOT MARK OF THE TOWER, PLACE A THIRTY-SIX INCH STRIPE. SO, GOING THROUGH THE ORDINANCE, AND I'D GO THROUGH IT PIECE BY PIECE, BUT JUST TO HIT THE HIGH NOTES, VERY RARELY IN MY BUSINESS DO YOU FIND A SITE THIS GOOD AND WE DID IT, THANKS TO MS. BRENDA. THE CARRIERS

WILL MAKE THE MOVE. THEY WILL BE IN POSITION TO COMPLETE THEIR COVERAGE AND CONTINUE TO COMPLETE THEIR COVERAGE, NOT ONLY IN THE FINKLEA COMMUNITY, BUT TO HAND OFF TO THOSE AROUND THEM. WE AGREE THAT AS SOON AS WE CAN GET IT MOVED, NO LATER THAN A HUNDRED AND TWENTY DAYS AFTER APPROVAL, THE OLD TOWER WILL COME DOWN. THAT WILL BE FULLY REMOVED AND THE CARRIERS WILL BE OVER ON MS. BRENDA'S PROPERTY. I'M HERE FOR ANY AND ALL QUESTIONS RELATED TO THE ORDINANCE. MR. GROSSCLOSE, WHO IS OUR DESIGN CHIEF AND HEAD OF OUR ACQUISITION EMPHASIS, IS HERE FOR ANY TECHNICAL QUESTIONS. IF YOU HAVE ANY QUESTIONS ABOUT PROPERTY, MS. BRENDA CAN MORE THAN ANSWER THEM.

MR. CHAIRMAN: ANY QUESTIONS BY COUNCIL?

MR. YATES: THANK Y'ALL FOR YOUR TIME.

MR. FOXWORTH: COULD YOU TELL ME WHAT STYLE THE NEW TOWER WILL BE?

MR. YATES: YES, SIR. IT WILL BE LATTICE VERSUS THE GUIDE STYLE. IT'S WHAT WE CALL A SELF-SUPPORT TOWER AND THE DIFFERENCE BEING, COUNCIL MEMBER FOXWORTH, IT WILL NOT HAVE THOSE WIRES COMING DOWN. IT WILL NOT HAVE

THOSE WIRES COMING DOWN.

UNKNOWN: I THINK THERE'S A PICTURE OF IT UP HERE.

MR. YATES: SO, THIS IS WHAT WE CALL EITHER A LATTICE STYLE OR SELF-SUPPORTING.

MR. CHAIRMAN: ANY OTHER QUESTIONS BY COUNCIL? MR. ALLEN?

MR. ALLEN: YES, SIR, MR. CHAIRMAN. WE STILL HAVE IN OUR TOWER ORDINANCE AT THE HUNDRED AND FIFTY FOOT MARK, IT MUST BE SURROUNDED BY THIRTY-SIX INCHES OF REFLECTIVE TAPE AND/OR PAINT.

MR. CHAIRMAN: YES, SIR.

MR. YATES: THAT'S WHAT WE PLAN TO DO AT THE HUNDRED AND FIFTY FOOT MARK, WHICH IS ROUGHLY THE HALFWAY MARK. WE WILL COMPLY WITH THE THIRTY-SIX INCH STRIPING.

MR. ALLEN: YOU WOULD KEEP THE YELLOW PAINT OFF IT?

MR. YATES: YES.

MR. CHAIRMAN: ANY OTHER QUESTIONS BY COUNCIL? HEARING NONE, ANYBODY FROM THE PUBLIC WANT TO SPEAK ON THIS MATTER? YES, SIR, IF YOU WOULD PLEASE IDENTIFY YOURSELF?

MR. CLARK: CERTAINLY, MR. CHAIRMAN, MEMBERS

OF THE COUNCIL, THANK YOU VERY MUCH. I AM CHRIS CLARK WITH NELSON MULLINS AND I'M HERE REPRESENTING TRI-STAR INVESTORS IN OPPOSITION TO THE MOVEMENT OF THE TOWER FOR HUGGINS ROAD. WITH ME IS DAVID BRUNING. HE'S AN ASSOCIATE AND GENERAL COUNSEL FOR TRI-STAR. ALSO MARK NINSKI, WHO'S VICE PRESIDENT OF ENGINEERING FOR TRI-STAR. SOME BRIEF BACKGROUND MIGHT BE IN ORDER ON THIS CASE. TRI-STAR TELA-COMMUNICATION COMPANY HAS THREE LOCATIONS IN HORRY COUNTY. I BELIEVE I HAVE SOME SLIDES TO SHOW YOU. THERE WE GO. THAT FIRST SLIDE WILL BE GREAT. WITH THREE LOCATIONS IN HORRY COUNTY, AND WE'RE PRESENTLY OPERATING A SITE AT THE ANNABELLE JOHNSON TOWER SITE. YOU CAN SEE ON THIS SLIDE THE FIRST TOWER NEAR HIGHWAY 9. NOW, ANNABELLE JOHNSON, SHE CAN'T BE HERE TONIGHT, BUT HER DAUGHTER IS HERE AND HER GRANDDAUGHTER IS HERE AND THEY'D BE HAPPY TO TALK TO YOU ABOUT HOW ANNABELLE JOHNSON RELIES ON THIS TOWER INCOME. SHE'S 79 YEARS OLD. SHE'S ON SUPPLEMENTAL OXYGEN. SHE RELIES ON THIS INCOME AS PART OF HER LIVING AND MS. JOHNSON'S DAUGHTER WILL TELL YOU ALL ABOUT THAT. WE OPERATE UNDER A LEASE THAT WAS

ORIGINALLY GIVEN FROM MS. JOHNSON THAT'S BEEN IN PLACE FOR SIXTEEN YEARS AND IT HAS NOT EXPIRED AND DOES NOT EXPIRE UNTIL 2005. THERE WAS A REPRESENTATION IN THE DOCUMENTS COUNCIL RECEIVED AND WE JUST HEARD THAT THERE'S BEEN NO ABILITY BY AMERICAN TO GET AN EXTENSION OF THAT LEASE. THAT'S SIMPLY NOT TRUE AND THE COUNCIL THAT WE HAVE HERE TODAY FOR TRI-STAR CAN MAKE VERY CLEAR THAT THERE'S BEEN NO EFFORT BY AMERICAN TO GET AN EXTENSION OF THE LEASE AND THERE HAS BEEN NO EFFORT BY TRI-STAR TO TERMINATE THAT LEASE. WHAT AMERICAN WANTS TO DO IS TO PUT UP A NEW TOWER ABOUT HALF A MILE FROM THE ANNABELLE JOHNSON'S SITE. UNFORTUNATELY, THE ORDINANCE AS WRITTEN, SIMPLY DOESN'T ALLOW IT. LET ME READ THAT ORDINANCE TO YOU, SECTION 1605. IT SAYS THERE, "NO NEW FREE-STANDING TELECOMMUNICATION TOWER SHALL BE PERMITTED." IT'S MANDATORY LANGUAGE. "UNLESS THE APPLICANT DEMONSTRATES THAT NO EXISTING TELECOMMUNICATION FACILITY CAN ACCOMMODATE THE APPLICANT'S PROPOSED USE." WELL, THAT'S CLEARLY NOT THE CASE HERE. IN THIS CASE, THERE'S BEEN AN ACCOMMODATION FOR SIXTEEN YEARS. THERE IS A

CURRENT LEASE WHICH IS IN FULL FORCE AND EFFECT TO CONTINUE THAT ACCOMMODATION. THE ORDINANCE IS WRITTEN TO DISCOURAGE THE PROLIFERATION OF TOWERS AND ALSO THE MOVING OF TOWERS AND THE REASON FOR THAT IS BECAUSE WHEN YOU MOVE A TOWER, IT HAS A DIFFERENT EFFECT ON FOLKS. AND SO, THE ORDINANCE IS WRITTEN TO STRICTLY CIRCUMSCRIBE THE AREAS WHERE TOWERS CAN BE. IT STRONGLY DISFAVORS NEW TOWERS. NOW, WE HAVE TO CONSIDER THE CO-LOCATION REQUIREMENT. IT PROHIBITS ANY NEW TOWER LOCATED WITHIN TWO AND A HALF MILES OF AN EXISTING TOWER. THERE'S NO EXCEPTION TO THE LANGUAGE OF THIS ORDINANCE TO MOVE A TOWER TO ANOTHER LOCATION THAT YOU LIKE BETTER. IT'S SIMPLY NOT IN THE ORDINANCE. THE CO-LOCATION RESTRICTION SAYS THAT IF YOU CAN BE ACCOMMODATED WITHIN TWO AND A HALF MILES, YOU HAVE TO USE THE EXISTING TOWER AND THAT'S WHAT WE HAVE HERE. IN ESSENCE, THE ORDINANCE STRONGLY ENCOURAGES TOWERS TO STAY IN PLACE TO REDUCE CONTROVERSY. FOLKS SEE A NEW TOWER COMING UP AND THEY DON'T KNOW WHY IT GOT THERE OR WHAT THE ELEMENTS OF THE DECISION WERE TO PUT THAT TOWER THERE. THAT'S WHY THE ORDINANCE IS IN

PLACE. NOW, CO-LOCATION CAN BE WAIVED, BUT IT'S NOT WARRANTED HERE. FIRST OF ALL, THERE'S SOME THINGS THAT WERE OMITTED IN THE PRESENTATION THAT YOU HAVE HEARD HERE REGARDING THE INFRASTRUCTURE. FOR A CARRIER TO MOVE TO A NEW LOCATION A HALF MILE AWAY, THEY WILL HAVE TO PUT IN ENTIRELY NEW INFRASTRUCTURE. OUR GUYS SUGGEST THAT INFRA-STRUCTURE INVESTMENT IS A HALF A MILLION DOLLARS PER CARRIER FOR ELECTRICAL SERVICES TO THE TOWER, FOR WIRES TO THE TOWER, FOR THE STORAGE OF EQUIPMENT AND COMPUTER MODUMS TO THAT TOWER. THERE'S NO REASON TO SUSPECT, BASED ON THE PRESENTATION YOU'VE HEARD AND THE DATA WE HAVE THAT THE CARRIERS WILL, IN FACT, MOVE. IN FACT, THEY DON'T HAVE TO MOVE BECAUSE THEY HAVE A RIGHT OF QUIET ENJOYMENT WHERE THEY ARE. AMERICAN TOWER CAN'T SIMPLY KICK `EM OFF THAT SITE AND SAY, "WE'RE GOING HALF A MILE." THEY HAVE A RIGHT OF QUIET ENJOYMENT AND IF YOU MOVE THIS TOWER, YOU JEOPARDIZE THE COVERAGE THAT THESE CARRIERS ARE CURRENTLY PROVIDED. IT'S ALSO CLEAR THAT SOME RECEPTION COULD BE IMPACTED BY THIS MOVE. THE TOWER IS CLOSE TO THE ROAD. IT PROVIDES

GOOD COVERAGE FOR HIGHWAY 9. THERE'S A REASON THAT YOU DON'T SEE CELL TOWERS IN THE MIDDLE OF THE PROPERTY AS AMERICAN SUGGESTS. AMERICAN'S REPRESENTATIVE SAID, "WELL, IT'S VERY REMARKABLE THAT WE HAVE THIS. WE DON'T USUALLY GET THIS." WELL, THERE'S A REASON FOR THAT. BECAUSE THESE PINE NEEDLES ATTACHED TO THESE PINE TREES ACT AS LITTLE TOWERS. AND THOSE LITTLE TOWERS INTERFERE POTENTIALLY WITH RADIO SIGNALS WHICH TRAVEL IN A STRAIGHT LINE. IF YOU PUT A TOWER IN AN AREA THAT'S REMOTE, YOU POTENTIALLY IMPACT COVERAGE. AND THAT IMPACT HASN'T BEEN DESCRIBED TO THIS COUNCIL. THE PROPOSED NEW TOWER IS ENTIRELY REDUNDANT. IT PROVIDES EXACTLY THE SAME COVERAGE AS THE CURRENT TOWER THAT WE HAVE NOW, AND THERE'S EXISTING SPACE ON THIS CURRENT TOWER TO ACCOMMODATE ANY OTHER WIRELESS PROVIDERS THAT WANT TO COME ON SITE AND PROVIDE COVERAGE. NOW ...

MR. CHAIRMAN: OKAY. WE'RE NOT GOING TO HAVE THE LENGTH OF TIME TO DO THIS. SO, YOU NEED TO KIND OF BE WRAPPING UP, OKAY.

MR. CLARK: CERTAINLY. CERTAINLY. THE QUES-TION THAT THE COUNCIL HAS TO ANSWER IS, WHAT

IS THE PRACTICAL REASON FOR MOVING THIS TOWER? NOW, AMERICAN SAYS THEY'RE GONNA TAKE DOWN THEIR TOWER, BUT WHAT THE COUNCIL SHOULD CONSIDER IS THE FACT THAT TRI-STAR HAS ALSO SUBMITTED AN APPLICATION TO PUT IN A NEW TOWER RIGHT BEHIND THE CURRENT TOWER IN CASE AMERICAN MOVES THAT TOWER AND THAT NEW TOWER, WHICH IS STILL PENDING BEFORE THIS COUNCIL, THAT'S SOMETHING THAT HAS TO BE DECIDED. THAT NEW TOWER WILL BE FURTHER SET BACK FROM THE ROAD. IT WILL HAVE DIFFERENT LANDSCAPING AND OTHER ELEMENTS THAT ARE TOUTED BY AMERICAN. SO, AT A MINIMUM, THIS ISN'T A DECISION THAT NEEDS TO BE MADE TONIGHT. AT LEAST UNTIL WE CAN DISCERN THE ELEMENTS OF THIS NEW PROPOSAL THAT TRI-STAR HAS MADE TO YOU. AND THAT IS HEARD IN FULL. IN SUMMARY, WE DON'T THINK THAT THE APPLICATION FOR THE NEW TOWER IS TIMELY. WE DON'T THINK IT BENEFITS THIS COUNTY AND WE ASK THIS COUNCIL TO REJECT IT.

MR. CHAIRMAN: THANK YOU, SIR. WE'VE GOT SOME QUESTIONS FOR YOU. WE ALSO HAVE TO TAKE ... ANYBODY ELSE FROM THE PUBLIC WANT TO SPEAK ON THIS? JODY, DO YOU HAVE A QUESTION?

MR. JODY PRINCE: I DO. NOT NECESSARILY FOR

YOU, SIR, BUT I UNDERSTAND THAT VERIZON, HTC, AND SOMEONE ELSE HAS A REPEATER OR ANTENNA ON THIS TOWER THAT'S EXISTING. IS THAT TRUE?

MR. CHAIRMAN: PLEASE STATE YOUR NAME.

MR. FITZGILD: MARTIN FITZGILD, VICE PRESIDENT OF ENGINEERING FOR TRI-STAR INVESTORS. CURRENTLY ON THE EXISTING TOWER T-MOBILE, VERIZON AND HTC ALL TODAY PROVIDE WIRELESS SERVICE TO THE FINKLEA AND LORIS AREA FROM THE EXISTING STRUCTURE ON THE JOHNSON PROPERTY.

MR. JODY PRINCE: SO, IS THERE ANYBODY FROM T-MOBILE, VERIZON OR HTC HERE THAT SAYS THEY'RE GONNA HAVE A DETRIMENT FROM MOVING THIS TOWER? SO, MR. CHAIRMAN, I DON'T THINK ANYBODY ELSE IS COMING FROM THE PUBLIC. I WOULD MOVE THAT WE ... AND I WOULD ASK THAT COUNCIL APPROVE THIS RELOCATION. I UNDERSTAND THAT THE ... THIS COMPANY IS GOING TO BE ASKING FOR A TOWER IN THE EXACT SAME SPOT, BUT THAT'S TO BE DETERMINED. I MEAN, THIS COMPANY OBVIOUSLY HAS A RIGHT TO TEAR THIS TOWER DOWN. WE'RE GONNA PUT THIS IN A RESOLUTION THAT WITHIN TWENTY DAYS ... A HUNDRED AND TWENTY DAYS, THEY ARE TO HAVE THIS TOWER REMOVED. CERTAINLY THEY HAVE A RIGHT TO MOVE IT IF THEY

LIKE. I PERSONALLY KNOW WHERE THIS TOWER IS. TRAVEL PAST IT EVERY OTHER DAY AND IT IS TOO CLOSE TO THE HIGHWAY. IT WOULD BE A GREAT THING TO HAVE IT MOVED AND THE LOCATION THEY HAVE IT ... I WAS ON SITE TODAY. THE LOCATION THEY'RE TALKING ABOUT IS "A" NUMBER ONE IN GRADE. UNLESS HTC, VERIZON, OR T-MOBILE CAN TELL ME SOMETHING THAT'S GONNA BE DETRIMENTAL TO THEIR SERVICE. I MEAN, I DON'T SEE `EM HERE.

MR. CHAIRMAN: HAVE YOU GUYS SPOKEN TO HTC, VERIZON, T-MOBILE?

MR. GROSSCLOSE: YES. JASON GROSSCLOSE, AMERICAN TOWER CORPORATION, 496 LONG POINT ROAD, MT. PLEASANT, SOUTH CAROLINA. YES, SIR, WE HAVE. T-MOBILE IS BEING PUT IN THE CONSTRUCTION DRAWINGS NOW. A REPRESENTATIVE FROM HTC IS HERE. NO ONE FROM VERIZON COULD MAKE IT, BUT THEY'RE AWARE AND ARE MOVING FORWARD WITH THE RELOCATION.

MR. CHAIRMAN: SO, IS THERE A PLAN TO GO TO YOUR NEW TOWER?

MR. GROSSCLOSE: YES, SIR. WE HAVE A LEASE AGREEMENT WITH THEM ON THE TOWER THAT WE HAVE AN OBLIGATION TO PROVIDE THEM AN ACCEPTABLE

LOCATION AND TO CONTINUE THEIR TRANSMISSION OF THEIR WIRE SERVICE.

MR. CHAIRMAN: THANK YOU, SIR. MR. PRINCE, ARE YOU FINISHED?

MR. JODY PRINCE: I'M READY TO VOTE.

MR. CHAIRMAN: WELL, WE HAVE SOME OTHER PEOPLE WHO WANT TO DISCUSS IT. MR. SCHULZ.

DR. SCHULZ: THANK YOU, MR. CHAIRMAN. ARRIGO OR JANET, WHAT'S GOING ON HERE WITH OUR ORDINANCE? IS THERE PROBLEMS WITH WHAT WE'RE GETTING READY TO VOTE ON? THEY'VE BROUGHT UP DIFFERENT ASPECTS OF? WHAT'S OUR EXPOSURE? WHAT'S GOING ON?

MS. CARTER: THE ONLY THING THAT I THINK HE WAS POINTING OUT IN TERMS OF OUR ORDINANCE IS, THAT COUNCIL HAS TO ... IF THERE'S ANOTHER TOWER WITHIN TWO AND A HALF MILE RADIUS OF THE EXISTING TOWER THAT THEY COULD CO-LOCATE ON, THEY HAVE TO EXPLAIN TO YOU WHY IT'S NOT PRACTICAL OR FEASIBLE FOR THEM TO DO SO AND COUNCIL IS, IN APPROVING THEIR REQUEST, IN EFFECT, GRANTING A CO-LOCATION WAIVER, WHICH YOU HAVE THE AUTHORITY TO DO. NOW, HE'S SAYING, AS I UNDERSTOOD, HE DOESN'T THINK THERE IS ANY PRACTICAL REASON WHY THEY CAN'T

LOCATE ON THE OLD TOWER THAT THEY'RE ALREADY ON; BUT THEY'VE EXPLAINED WHY. IN FACT, THEY THINK IT'S PRUDENT TO MOVE IT AND I THINK COUNCIL WOULD BE COMPLETELY WITHIN YOUR PURVIEW ...

MR. CHAIRMAN: RIGHT.

MS. CARTER: ... TO GRANT THAT CO-LOCATION RIGHT NOW AND APPROVE THE TOWER IF YOU DEEM IT APPROPRIATE.

MR. CHAIRMAN: MR. COUNTY ATTORNEY, DO YOU WANT TO WEIGH IN ON THIS?

MR. CAROTTI: I CONCUR WITH WHAT MS. CARTER HAS SAID.

MS. CARTER: I WOULD SAY WE WOULD BE SINCE WE DIDN'T INCLUDE THE REQUIREMENT TO REMOVE THE OLD TOWER WITHIN A HUNDRED AND TWENTY DAYS OF FINAL APPROVAL OF THE NEW TOWER. I MEAN, FINAL APPROVAL OF THE NEW BUILT TOWER. WE WOULD NEED TO INCLUDE THAT IN THE RESOLUTION AND YOU WOULD WANT TO MAKE AN AMENDMENT IF YOU'RE GOING TO APPROVE THAT.

MR. JODY PRINCE: I MOVE TO AMEND AND SAY THAT.

MS. CARTER: YOU WOULD NEED THAT REQUIREMENT.

MR. CHAIRMAN: WOULD YOU PLEASE STATE THE

AMENDMENT, MS. CARTER.

MS. CARTER: THE AMENDMENT WOULD BE THAT THE APPLICANT IS REQUIRED TO REMOVE THE EXISTING TOWER. THAT THEY ARE RE-LOCATING WITHIN A HUNDRED AND TWENTY DAYS OF FINAL INSPECTION AND APPROVAL OF THE NEW TOWER.

MR. J. PRINCE: SO MOVED.

UNKNOWN: SECOND.

MR. CHAIRMAN: DO WE HAVE A MOTION ON THE ORIGINAL?

UNKNOWN: YES, SIR.

MR. CHAIRMAN: SO WE HAVE AN AMENDED MOTION. MR. GRABOWSKI.

MR. GRABOWSKI: MINE WAS ON THE HUNDRED AND TWENTY DAYS. I DIDN'T SEE IT IN THERE. WE JUST TOOK CARE OF THAT.

MR. CLARK: MR. CHAIRMAN, IF I MIGHT CLARIFY ONE THING FOR THE RECORD. MY CLIENT CORRECTED ME.

MR. CHAIRMAN: YES. SURE.

MR. CLARK: WHEN I WAS PRESENTING, I SAID THAT THE CURRENT LEASE EXPIRED IN 2005. THAT WAS SIMPLY AN ERROR OF STATEMENT. 2015 IS WHEN THAT LEASE EXPIRES. SO, THE CURRENT LEASE HAS NOT EXPIRED. AND THE ONE OTHER CLARIFICATION.

I BELIEVE THE REPRESENTATIVE FOR AMERICAN SAID THAT THE TOWER WAS THE SAME HEIGHT, 287. IN FACT, THE PROPOSED TOWER IS 300 FEET, WHEREAS, THE CURRENT TOWER IS 287.

MR. CHAIRMAN: THANK YOU, SIR. JUST SO WE CAN CLARIFY THIS RELATIONSHIP, IF YOU WOULD PLEASE, STEP BACK TO THE MICROPHONE. YOU GUYS ACQUIRED THE PROPERTY UNDER THIS EXISTING TOWER?

MR. CLARK: THAT'S RIGHT. WE HAVE AN EASEMENT UNDER THE EXISTING TOWER AND WE OPERATE THAT EASEMENT FOR THE BENEFIT OF MS. JOHNSON.

MR. CHAIRMAN: OKAY. THANK YOU.

MR. YATES: IF I MAY, MR. CHAIRMAN, AND NOT TO PROLONG, JUST FOR CLARIFICATION THAT MR. GROSSCLOSE GAVE ME THE OMNI ANTENNAS VANGUARD PLACED ON THE TOP WOULD TAKE IT TO THE AGL 300 FOOT TOWER.

MR. CHAIRMAN: THANK YOU.

MR. YATES: THANK YOU, SIR.

MR. CHAIRMAN: ALRIGHT. WE HAVE A MOTION ON THE AMENDMENT AND A SECOND. ANY FURTHER DISCUSSION ON THE AMENDMENT? HEARING NONE, ALL IN FAVOR SAY AYE.

FULL COUNCIL: ALL AYES.

MR. CHAIRMAN: ANY OPPOSED? MOTION CARRIES. NOW WE'RE BACK TO THE ORIGINAL MOTION ... THE ORIGINAL ORDINANCE. EXCUSE ME, THE ORIGINAL RESOLUTION. ANY FURTHER DISCUSSION? HEARING NONE, ALL IN FAVOR SAY AYE.

FULL COUNCIL: AYE.

MR. CHAIRMAN: ANY OPPOSED? MOTION CARRIES.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
TRISTAR INVESTORS, INC., MINERVA REALTY, LLC, and ANGELINE JOHNSON,	)	Civil Action No. 2012-CP-26-8652
Plaintiffs,	)	RECORD ON APPEAL
vs.	)	
THE HORRY COUNTY COUNCIL and AMERICAN TOWERS, LLC,	)	
Defendants.	)	

FILED
HORRY COUNTY
2013 MAR 15 AM 8:10
ELAINE INGGINS-WARD
CLERK OF COURT

AFFIDAVIT OF PAM THOMPKINS

PERSONALLY APPEARED BEFORE ME, PAM THOMPKINS, who being duly sworn deposes and states as follows:

I am the Assistant Zoning Administrator for Horry County and I keep and maintain all records pertaining to the review and approval of telecommunications towers. I hereby certify that the documents attached hereto constitute the complete record of Horry County in the above captioned case. I further certify that the attached copies are true and correct copies of those records.

FURTHER THE DEPONENT SAITH NOT.

Pam Thompkins

Pam Thompkins, Assistant Zoning Administrator

Sworn to before me this 21
day of February 2013

Alicia J. Shelley

Notary Public for South Carolina

My Commission Expires: July 12, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	CIVIL ACTION NO.: 2012-CP-26-8652
Tristar Investors, Inc., Minverva Realty, LLC and Angeline Johnson,	)	
Plaintiff,	)	CERTIFICATE OF SERVICE
vs.	)	
The Horry County Council and American Tower Corporation,	)	
Defendants.	)	

FILED
HORRY COUNTY
2013 MAR 15 AM 8:10
ELAINE HUGGINS-WARD
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, Kimberly W. Nobles, who first being first duly sworn deposes and says:

1. That she is a legal assistant for the attorney representing Defendant Horry County Council;
2. That the following document was this date served upon the Plaintiff's counsel:

Record on Appeal and Transcript of Proceedings Before Horry County Council During Regular Council Meeting Held on October 16, 2012, Regarding Agenda Item No. 5: Resolution R-73-12 and Public Hearing

by placing a copy of the same in the United States Mail, postage prepaid, and sent to the last known address as follows:

Susan P. MacDonald, Esquire
Nelson Mullins Riley & Scarborough
Post Office Box 3939
Myrtle Beach, South Carolina 29577

Franklin G. Daniels, Esquire
David C. Slough, Esquire
Nexsen Pruet, LLC
1101 Johnson Avenue, Suite 300
Myrtle Beach, South Carolina 29577

L. Morgan Martin, Esquire
1121 Third Avenue
Conway, South Carolina 29526

This 14th day of March, 2013

Kimberly W. Nobles

SWORN TO BEFORE ME this
14th day of March, 2013

Notary Public for South Carolina (L.S.)
My Commission Expires: 7-17-2017

I certify this to be a true and correct copy.

Patricia S Hartley

Patricia S. Hartley, Clerk to Council

COUNTY OF HORRY)
)
STATE OF SOUTH CAROLINA)

RESOLUTION NO. R-73-12

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

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

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

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

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

NOW THEREFORE, Horry County Council resolves to approve the permit to locate a 300 ft self support telecommunications tower on TMS# 038-00-01-020 located on a .25 acre parcel off W. Hwy 9 Business on Huggins Rd Horry County, South Carolina. However, the Applicant, American Tower, shall be required to remove its old tower from the current location on Hwy 9 Business at TMS# 037-00-02-075 within 120 days of the final inspection and approval of the new tower.

AND IT IS SO RESOLVED.

Dated this 16th day of October 2012.

Tele# 12-09-001

HORRY COUNTY COUNCIL

H. Tom Rice

H. Tom Rice, Chairman

Harold G. Worley, District 1

Brent J. Schulz, District 2

Marion D. Foxworth, III, District 3

Gary Loftus, District 4

Paul D. Price, Jr., District 5

Robert P. Grabowski, District 6

James R. Frazier, District 7

Carl H. Schwartzkopf, District 8

W. Paul Prince, District 9

Jody Prince, District 10

Al Allen, District 11

Attest:

Patricia S Hartley

Patricia S. Hartley, Clerk to Council

Tele# 12-09-001

Review Sheet

PROPERTY INFORMATION			
Applicant	American Tower	**Telecom Permit #**	12-09-001
Tax Map (TMS) #	038-00-01-020	**County Council District #**	J. Prince
Site Location	ATC 278053 Located off W. Hwy 9 Bus and on Huggins Road	**Staff Recommendation**	Approval
Property Owner Contact	Steve Vondran, American Tower	**Size (in acres) of Request**	.25ac

REVIEW CRITERIA		
Zoning District	**Tower Height**	**Tower Type**
Forest Agriculture (FA)	300 ft	Self Support Tower

Proximity of tower to residential structures and zoning district boundaries

The site is surrounded by FA zoned property. There is a cabin within the fall zone, however the property owner is aware and will sign a waiver.

Nature of uses on adjacent and nearby properties

The adjacent uses are mostly farm land and wooded wetlands.

Surrounding Topography

This parcel is surrounded by wood land, wetlands and fields.

Surrounding tree coverage and foliage

There are no trees between the tower and Huggins Road.

Design of tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness

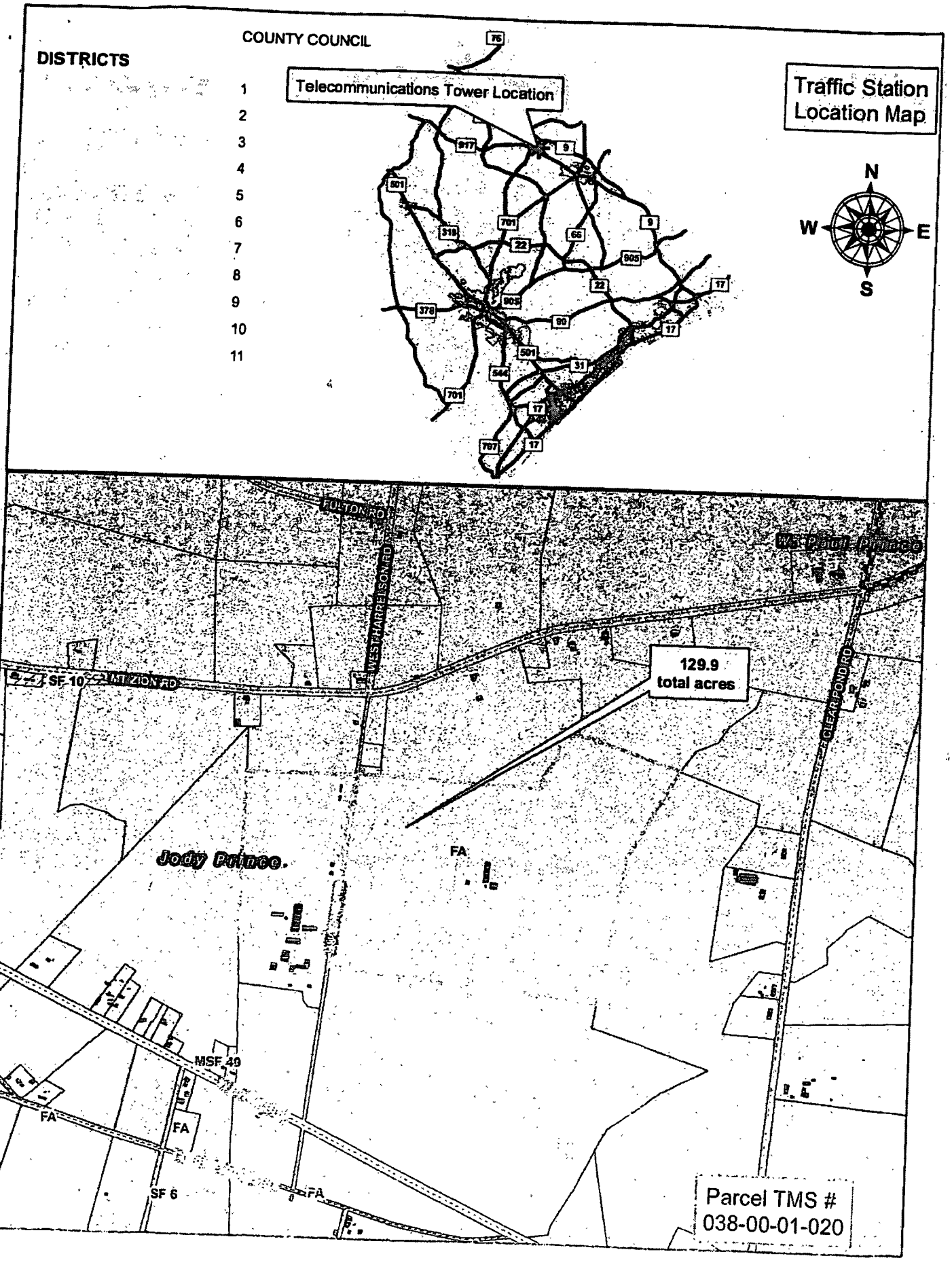
The tower is designed as a 300ft self support tower. The applicant is proposing to landscape the site.

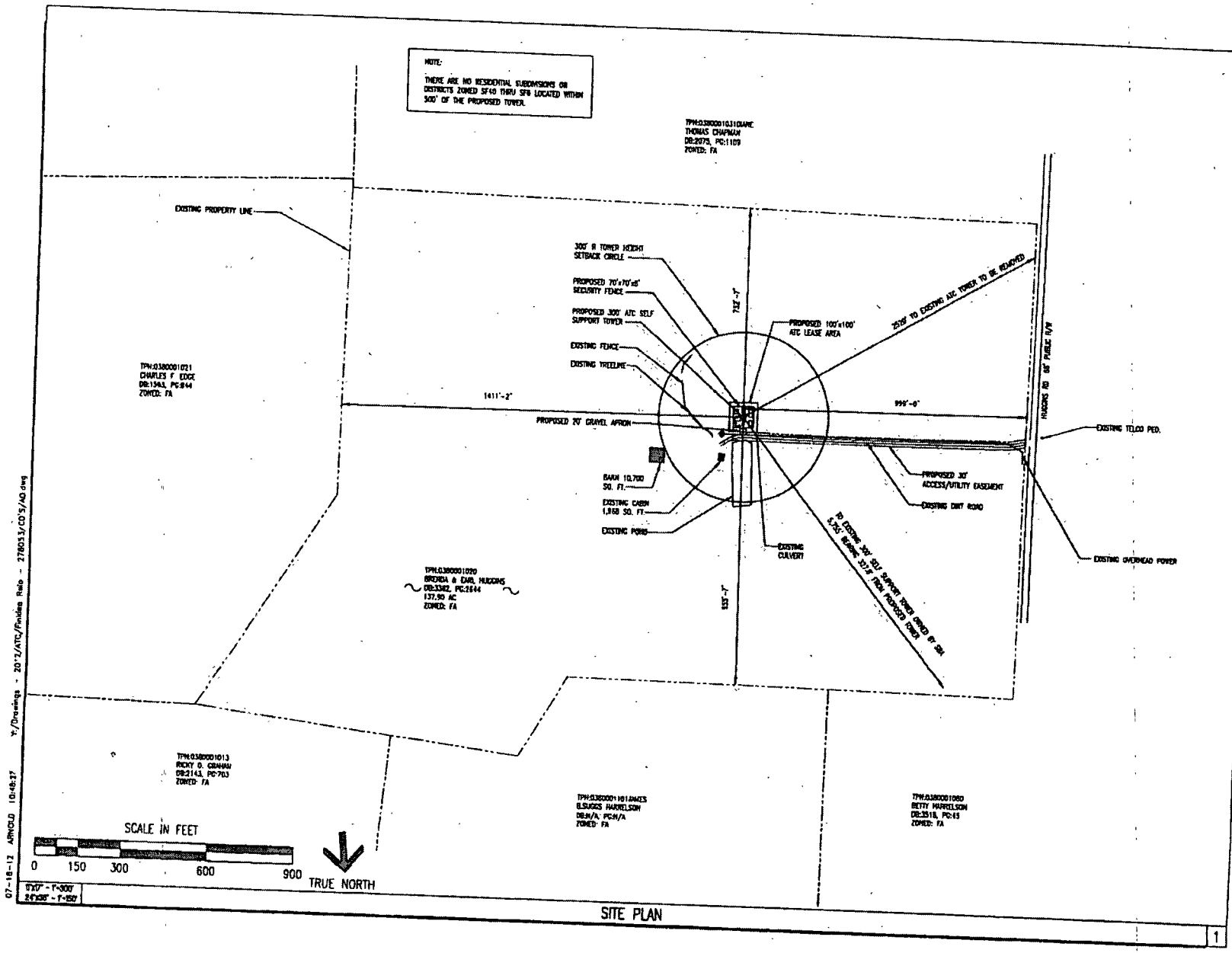
Proposed Ingress and Egress

Direct access is a 30ft access easement off Huggins Road..

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

Tele# 12-09-001


DISTRICTS
COUNTY COUNCIL
1
2
3
4
5
6
7
8
9
10
11
Telecommunications Tower Location
Traffic Station Location Map
N
W
E
S
FULTON RD
WESTHAVEN SON RD
MT ZION RD
SF 10
129.9 total acres
CLEAR POND RD
Jody Prince
FA
MSF 49
FA
FA
SF 6
FA
Parcel TMS # 038-00-01-020



07-18-12 ARNOLD 10:48:37 Y:/Drawings - 20'2/ATC/Finklea Relo - 278053/CD'S/A0.dwg

AMERICAN TOWER CORPORATION
116 LORIS POINT ROAD
MOUNT PLEASANT, SC 29464
TEL: (843) 971-8335
FAX: (843) 971-8899

THESE DRAWINGS AND/OR THE ACCOMPANYING SPECIFICATIONS OR ASSIGNMENTS OF SCHEMES, AS THE EXCLUSIVE PROPERTY OF AMERICAN TOWER CORPORATION AND THEIR USE AND PUBLICATION SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH THEY ARE PREPARED. REUSE, REPRODUCTION OR PUBLICATION BY ANY METHOD IN WHOLE OR IN PART, IS PROHIBITED EXCEPT BY WRITTEN PERMISSION FROM AMERICAN TOWER CORPORATION. VISIT TO THESE PLANS AND/OR SPECIFICATIONS SHALL REQUIRE THAT AMERICAN TOWER CORPORATION REPRESENTATIVES AND LOCAL CONTACT WORK WHICH SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF ACCEPTANCE OF THESE RESTRICTIONS.

BC architects engineers
9801 COLUMBIA BLVD, SUITE 200
FALLS CHURCH, VA 22041-3503
TEL: (703) 574-8000
FAX: (703) 971-4388

SHEET REVISION

NO.	DESCRIPTION	BY	DATE
1			
2			
3			
4			
5			
6			

ATC SITE NUMBER:
278053
ATC SITE NAME:
FINKLEA RELO
SITE ADDRESS:
215 HUGGINS RD
LORIS, SC 29569

STAMP HERE
SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 20052
07.24.12
CHRISTOPHER B. MORRIS

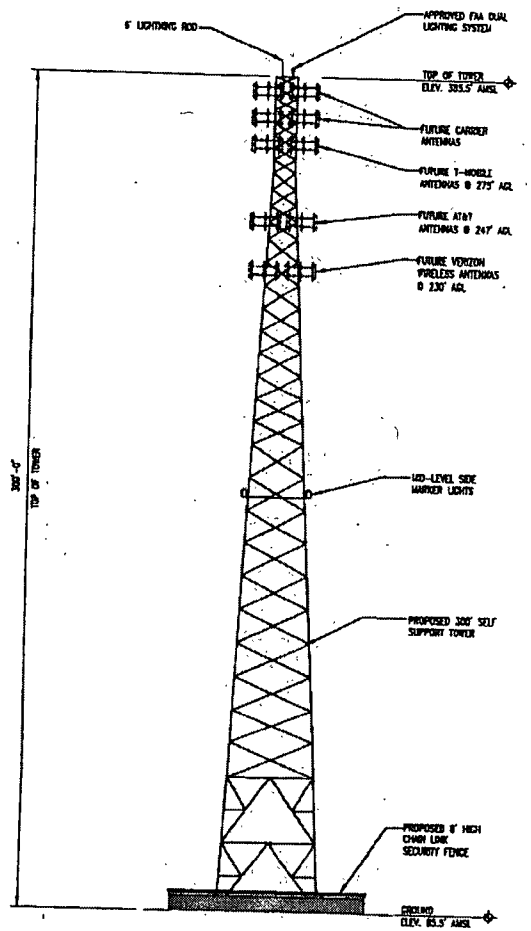
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CHECKED BY:	DRS
DATE DRAWN:	07-24-12
SUBMISSIONS:	FINAL CD'S

SHEET TITLE:
SITE PLAN

SHEET NUMBER: A-0
REV. 1

COA CONFIRM

ROA_0089



NOTE:
PROPOSED TOWER WILL HAVE A GALVANIZED FINISH

SCALE IN FEET
0 10 20 40 60

1"=40'

TOWER ELEVATION

07-18-12 ARNOLD 16:22:58 I:/Drawings - 2012/ATC/Finklea Relo - 278053/CD'S/A2.dwg

AMERICAN TOWER CORPORATION
4700 LONG POINT ROAD
MOUNT PLEASANT, SC 29464
TEL: (843) 971-6383
FAX: (843) 971-6388

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BC
architects
engineers
8001 COLUMBIA PIKE, SUITE 330
FALLS CHURCH, VA 22041-3202
TEL: (703) 671-6200
FAX: (703) 671-6388

SHEET REVISION

NO.	DESCRIPTION	BY	DATE
1			
2			
3			
4			
5			
6			

ATC SITE NUMBER:
278053

ATC SITE NAME:
FINKLEA RELO

SITE ADDRESS:
215 HUGGINS RD
LORIS, SC 29569

STAMP HERE:
SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 20052
07.24.12
CHRISTOPHER D. MORIN

DRAWN BY:	AST
CHECKED BY:	CDM
DATE DRAWN:	07-24-12
SUBMISSION:	FINAL CD'S

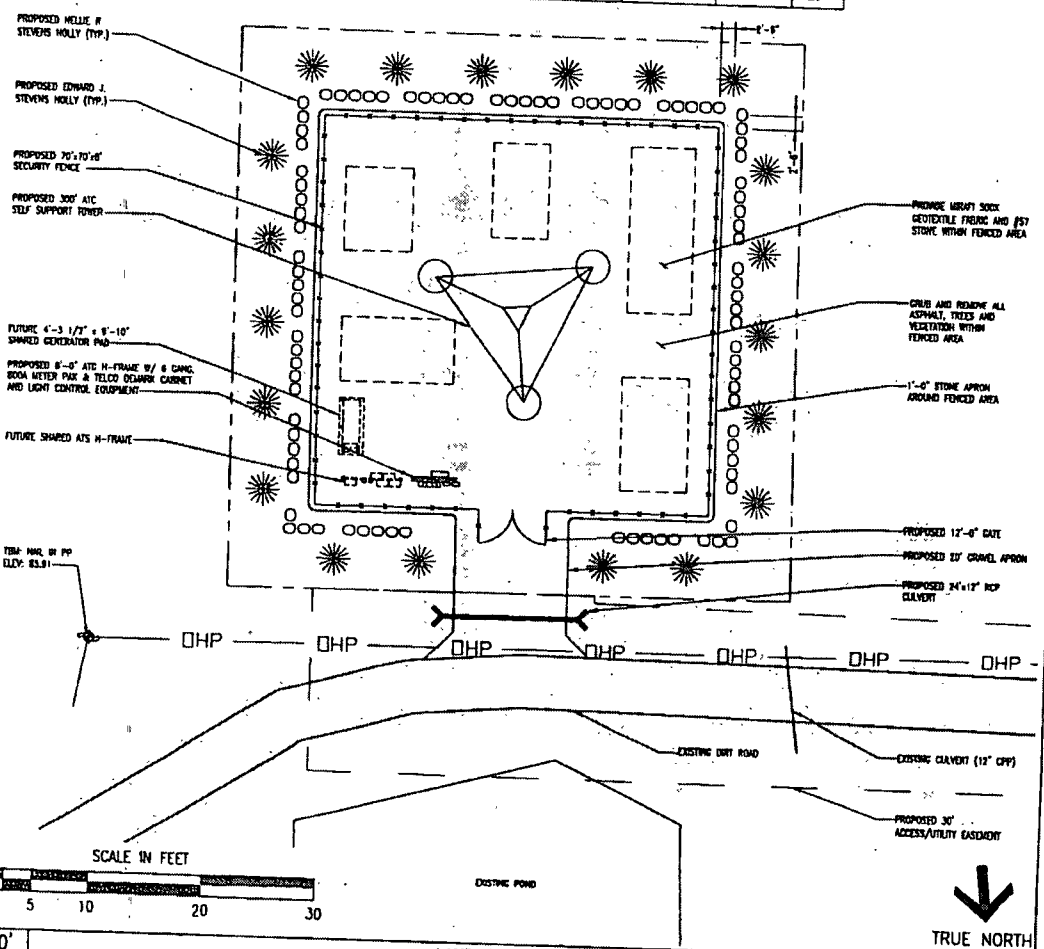
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TOWER ELEVATION

SHEET NUMBER: A-2
REV: 1

COPYRIGHT

ROA_0091

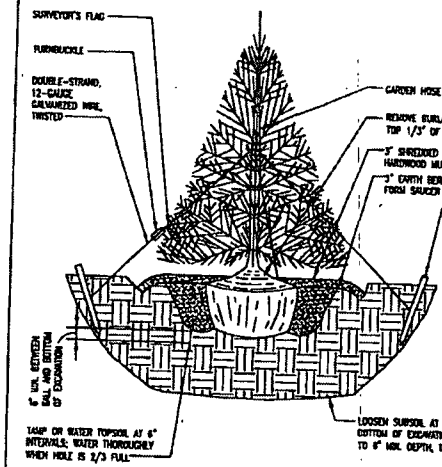
SYMBOL	QTY.	BOTANICAL NAME	COMMON NAME	HEIGHT @ PLANTING	HEIGHT @ MATURITY	CALIPER SIZE @ MATURITY	SPACING
○	91	ILEX X NELLIE R. STEVENS	NELLIE R. STEVENS HOLLY	2'-0" (MIN.)	20' MIN.	1"-1.5"	2.5'
✳	20	ILEX X EDWARD J. STEVENS	EDWARD J. STEVENS HOLLY	2'-0" (MIN.)	20' MIN.	1"-1.5"	2.5'



1" = 10'

LANDSCAPING PLAN

1



NOTE(S):
1. STEVENS HOLLY TREE SHALL REACH A MINIMUM HEIGHT OF 20 FEET AT MATURITY.
2. STEVENS HOLLY TREE SHALL BE PLANTED @ 2.5' ON CENTER IN THE BUFFER AROUND THE FENCED COMPOUND.

N.T.S.

TREE INSTALLATION DETAIL

2

07-18-12 ARNOLD 16:33:41 Y:/Drawings - 2012/ATC/Finklea Relo - 278053/CD's/L1.dwg

AMERICAN TOWER CORPORATION
400 LONG POINT ROAD
MOUNT PLEASANT, SC 29464
TEL: (843) 971-4383
FAX: (843) 971-8339

BC architects engineers
8444 COLUMBIA PIKE, SUITE 220
FALLS CHURCH, VA 22041-2300
TEL: (703) 671-4300
FAX: (703) 671-4300

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SHEET REVISION

NO.	DESCRIPTION	BY	DATE

ATC SITE NUMBER:
278053

ATC SITE NAME:
FINKLEA RELO

SITE ADDRESS:
215 HUGGINS RD
LORIS, SC 29569

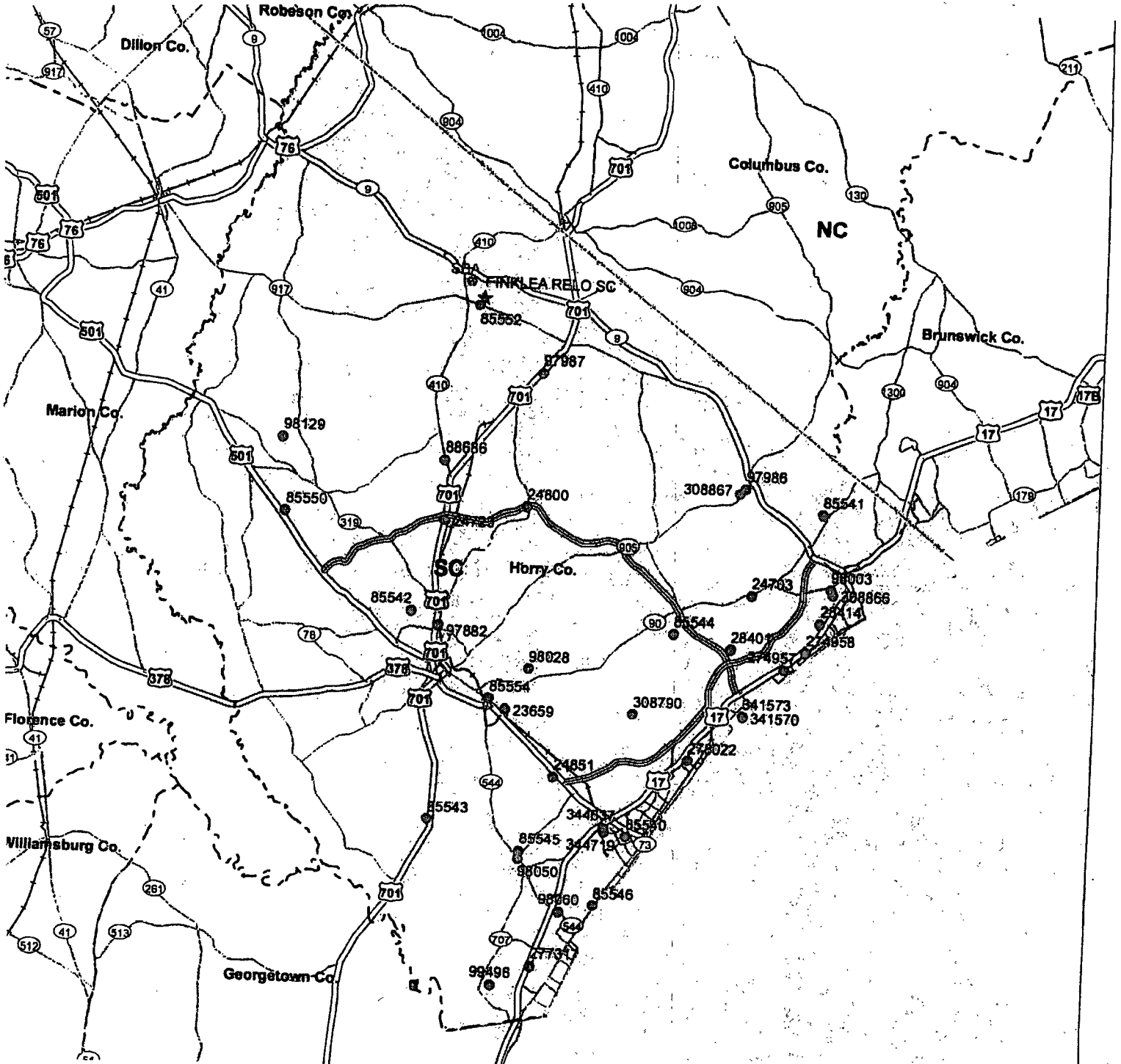
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SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 20052
07.24.12
CHRISTOPHER D. MORIN

DRAWN BY:	AGT
CHECKED BY:	CDM
DATE DRAWN:	07-24-12
SUBMISSION:	FINAL CD'S

SHEET TITLE:
LANDSCAPING PLAN

SHEET NUMBER: L-1
REV.: 0



AMERICAN TOWER

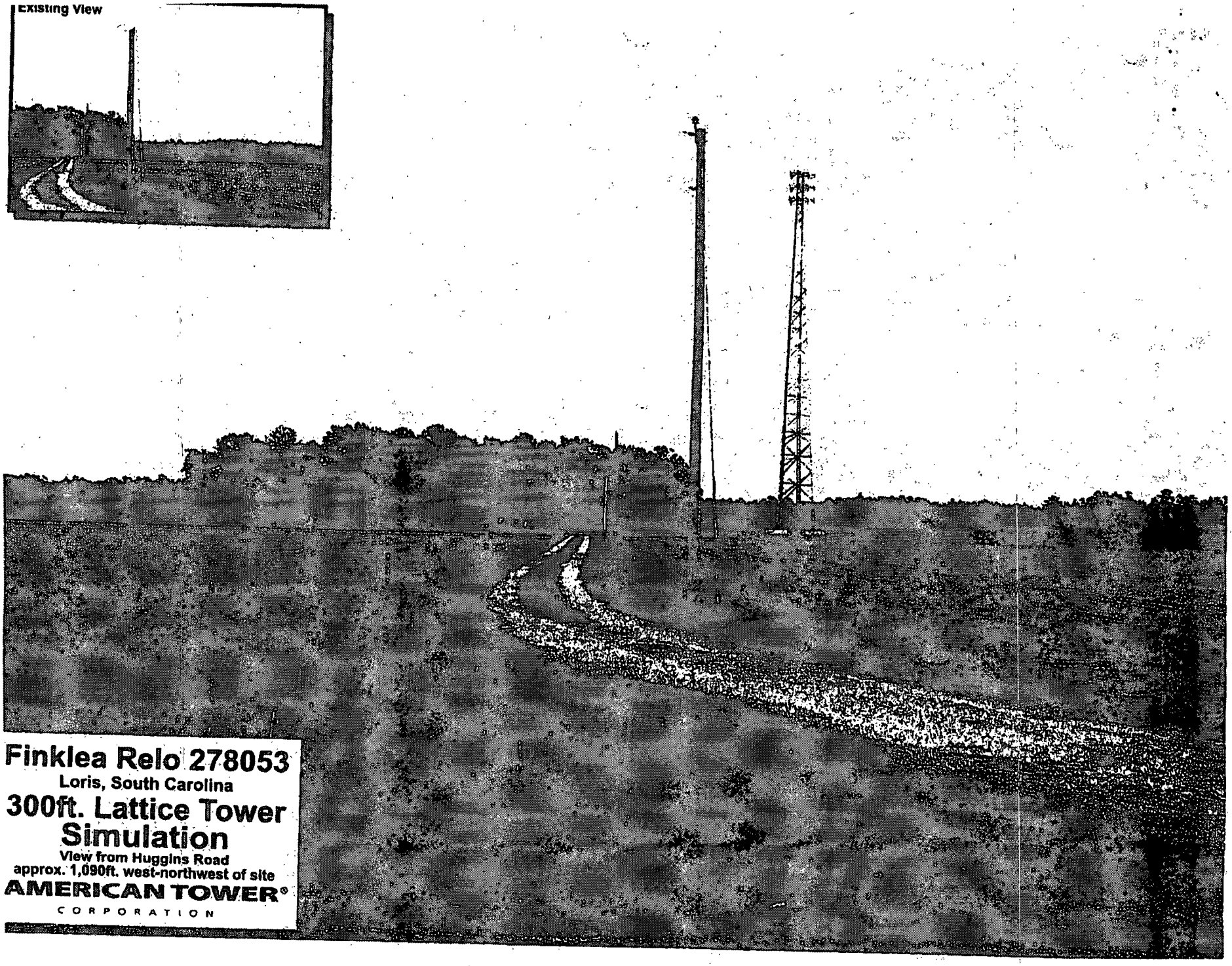
ATC Marketable Assets in Horry County, SC

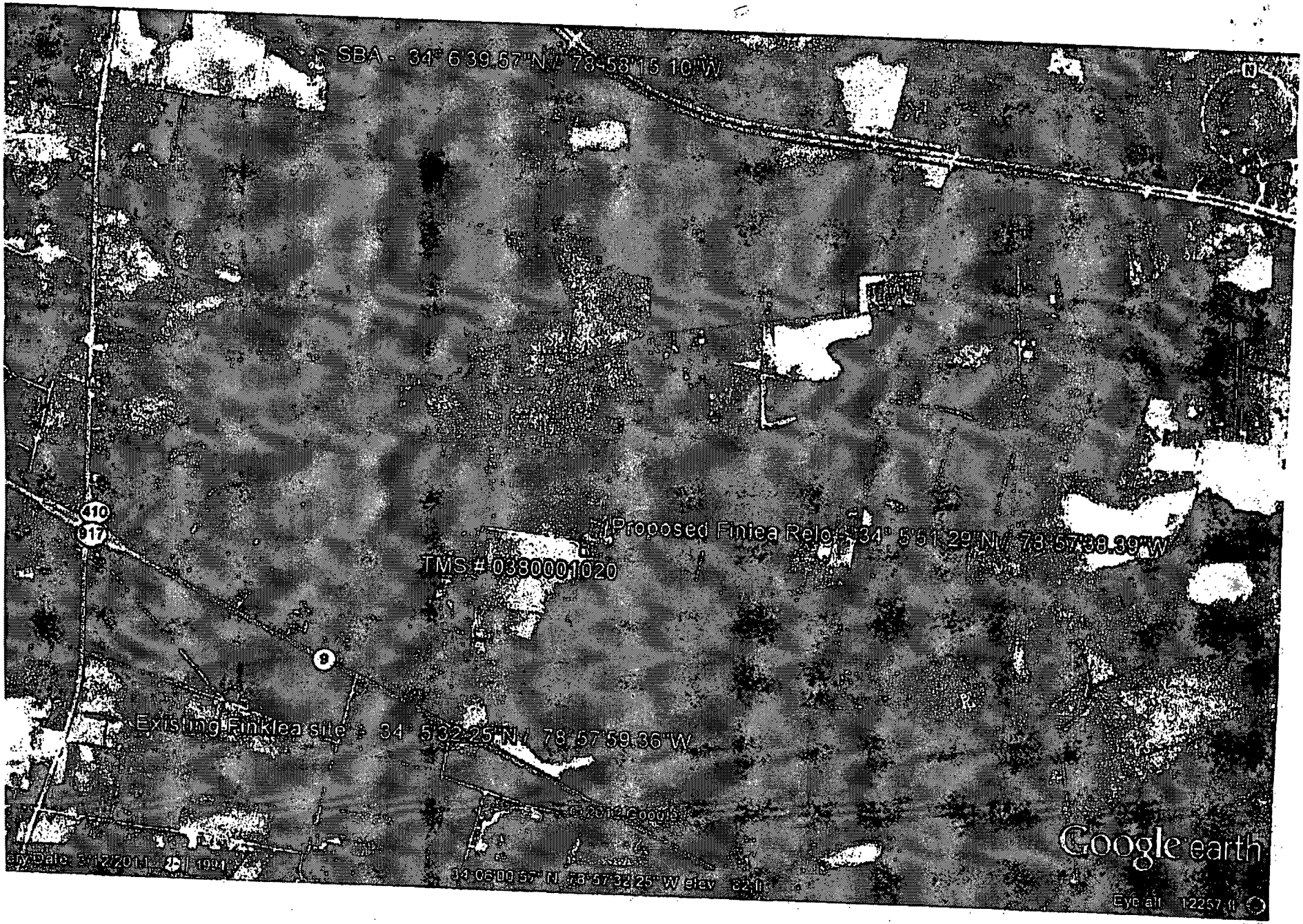
N

1 in = 7 miles

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

ROA_0092


Existing View
Finklea Relo 278053
Loris, South Carolina
300ft. Lattice Tower
Simulation
View from Huggins Road
approx. 1,090ft. west-northwest of site
AMERICAN TOWER®
CORPORATION


SBA - 34° 6'39.57"N / 78°58'15.10"W
Proposed Finlea Relo - 34° 5'51.29"N / 78°57'38.39"W
TMS # 0380001020
Existing Finklea site - 34° 5'32.25"N / 78°57'59.36"W
410
917
9
Google earth

I certify this to be a true and correst co

Patricia S Hartley

Patricia S. Hartley, Clerk to Council

MINUTES
HORRY COUNTY COUNCIL
REGULAR MEETING
October 16, 2012
6:00 p.m.

MEMBERS PRESENT: Tom Rice, Chairman; Harold Worley; Brent Schulz; Marion Foxworth; Gary Loftus; Bob Grabowski; James Frazier; Paul Prince; Jody Prince; and Al Allen.

MEMBERS ABSENT: Carl Schwartzkopf and Paul Price.

OTHERS PRESENT: Chris Eldridge; Pat Hartley; Anne Wright; Steve Gosnell; Paul Whitten; Arrigo Carotti; Janet Carter; Barry Spivey; Westley Sawyer; and Lisa Bourcier.

In accordance with the FOIA, notices of the meeting were provided to the press stating the time, date, and place of the meeting.

CALL TO ORDER: Chairman Rice called the meeting to order at approximately 6:00 p.m.

INVOCATION: Mr. J. Prince gave the invocation.

PLEDGE: Mr. Frazier led the pledge.

PUBLIC INPUT- Agenda-Items: There was none.

CHANGES TO THE AGENDA:

Mr. P. Prince moved to defer Ordinance 74-12 to the next meeting.

Mr. Foxworth requested to add a Distribution of Recreation Funds in the amount of $20,000 to Horry County Parks and Recreation Department for recreation development.

Mr. Worley requested to add a Distribution of Recreation Funds in the amount of $5000 to the Little River Chamber of Commerce.

Ms. Hartley stated that Mr. Whitten would like to add an Announcement regarding the Fire Chief.

Mr. Carotti requested to add an Executive Session item in which staff would provide a briefing related to negotiations incident to proposed contractual arrangements at the Myrtle Beach International Airport.

Mr. Gosnell requested to defer the Update on Riding on a Penny road projects to the November 13th Council meeting.

APPROVAL OF AGENDA CONTENTS: Mr. Worley moved to approve the agenda as amended, seconded by Mr. Grabowski. The motion passed unanimously.

APPROVAL OF MINUTES: Regular Meeting October 2, 2012: Mr. P. Prince moved to approve the minutes as submitted, seconded by Mr. Loftus. The motion passed unanimously.

APPROVAL OF CONSENT AGENDA: Mr. J. Prince moved to approve the Consent Agenda, seconded by Mr. Grabowski. The Consent Agenda consisted of the following:

Third reading of the following ordinances to approve the request to amend the official zoning maps: 73-12 Jim Gray, agent for Jerry McClain Evans; 75-12 Felix Pitts, agent for Sandhills Bank; and 76-12 Paul Prince, agent for PCP Property LLC.

The motion passed unanimously.

RESOLUTIONS/PRESENTATIONS:

Update on the MYR Terminal Expansion completion schedule. Bill Cram, Executive Vice President of MB Kahn Construction Company, provided an update on the terminal expansion stating that January 25, 2013 was the target date for the certificate of occupancy. February 19, 2013 would be the first date for passenger use of the terminal.

Update on Lean Six Sigma Implementation. Ms. Wright presented an update on the Lean Six Sigma Implementation process stating the program focused on enhancing efficiencies caused by cultural change and concentrating on continuous improvement. She explained the various planning stages and the current status of the initiative.

Announcement of New Fire Chief. Mr. Whitten announced that Mr. Fredrick Crosby, from Hanover, Virginia, had been selected to be the next Fire Chief for Horry County Rescue. He brought over 30 years of fire experience and 12+ years as the Chief of Hanover County Fire and EMS. He would begin his employment with Horry County on November 15th.

Resolution R-73-12 and Public Hearing to approve the permit to locate a telecommunications tower on Huggins Road off of West Hwy 9 Business. **Mr. J. Prince moved to approve, seconded by Mr. Grabowski.** Ms. Carter gave a briefing on the resolution. The following people spoke at the public hearing: Jonathan Yates, American Tower; Chris Clark, Nelson Mullins Law Firm; Mark Kaminski, American Tower and Jason Crestclose, American Tower. **Mr. J. Prince moved to amend that the applicant was required to remove the existing tower that they were relocating within 120 days of final inspection and approval of the new tower, seconded by Mr. Grabowski. The motion to amend passed unanimously. The main motion as amended passed unanimously.**

READING OF ORDINANCES:

Second reading of **Ordinance 78-12** to amend the FY 2013 budget so as to add Section 23 that authorizes the administrator to transfer lobbying expenditures and a revenue source to cover same from the general fund to a separate fund. **Mr. Worley moved to approve, seconded by Mr. Allen. The motion passed with Mr. Foxworth voting nay.**

Second reading of **Ordinance 79-12** to amend the FY2013 budget so as to appropriate additional revenue in the general fund in connection with a contract for inmate housing with the US Marshall Service for the purpose of providing funding for 2 additional deputy sheriff positions and 2 transportation vans. **Mr. Allen moved to approve, seconded by Mr. Schulz. The motion passed unanimously.**

Second reading of **Ordinance 80-12** to amend the FY 2012 budget so as to add Section 24 designating that funds appropriated for OPEB (retiree insurance) that are not expended during the fiscal year be committed for that purpose as part of the fund balance. **Mr. Loftus moved to approve, seconded by Mr. Allen. The motion passed unanimously.**

OLD/NEW BUSINESS:

ANNOUNCEMENTS:

Memorial Dedication: Michael Hamilton Hatchell; Bill Norman; Shelva Jean Booth Todd; Richard Williams; Lawton Johnson, Jr.; Winston Jimmy Shelly; Archie Steel; Lester Williams, Jr.; O'Bryan Cox; Spencer Boan; Candler Shealy Smith; and Edward Fanjoy.

Resolution R-74-12 and Public Hearing to approve the permit to locate a telecommunications tower on Melissa Lane off of Hwy. 90. **Mr. P. Prince moved to approve, seconded by Mr. Grabowski.** No one spoke at the public hearing. **The motion passed unanimously.**

Disbursements of District Recreation Funds: Mr. Allen- $5000 to Aynor-Gallivants Ferry Cultural Heritage Fund; J. Prince- $600 to Green Sea-Floyds Robotics Club; Mr. Foxworth- $20,000 to Horry County Parks and Recreation Department; and Mr. Worley- $5000 to Little River Chamber. **Mr. Worley moved to approve, seconded by Mr. Grabowski. The motion passed unanimously.**

Upcoming Meetings: Regular Council Meetings - October 16, November 13, December 11; Infrastructure & Regulation Committee - October 18; and Fall Budget Retreat - November 16.

PUBLIC INPUT- Non-agenda Items: There was none.

HORRY COUNTY COUNCIL

H. Tom Rice

H. Tom Rice, Chairman

Harold G. Worley, District 1

Brent J. Schulz, District 2

Marion D. Foxworth, III, District 3

Gary Loftus, District 4

Paul D. Prince, Jr., District 5

Robert P. Grabowski, District 6

James R. Frazier, District 7

Carl H. Schwartzkopf, District 8

W. Paul Prince, District 9

Jody Prince, District 10

Al Allen, District 11

ATTEST:

Patricia S Hartley

Patricia S. Hartley, Clerk to Council

County Council Decision Memorandum
Horry County, South Carolina

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

ISSUE:

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

PROPOSED ACTION:

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

RECOMMENDATION:

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

BACKGROUND:

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

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

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

Tele# 12-09-001

Telecommunications Tower Permit
Review Sheet

PROPERTY INFORMATION			
Applicant	American Tower	**Telecom Permit #**	12-09-001
Tax Map (TMS) #	038-00-01-020	**County Council District #**	J. Prince
Site Location	ATC 278053 Located off W. Hwy 9 Bus and on Huggins Road	**Staff Recommendation**	Approval
Property Owner Contact	Steve Vondran, American Tower	**Size (in acres) of Request**	.25ac

REVIEW CRITERIA		
Zoning District	**Tower Height**	**Tower Type**
Forest Agriculture (FA)	300 ft	Self Support Tower

Proximity of tower to residential structures and zoning district boundaries

The site is surrounded by FA zoned property. There is a cabin within the fall zone, however the property owner is aware and will sign a waiver.

Nature of uses on adjacent and nearby properties

The adjacent uses are mostly farm land and wooded wetlands.

Surrounding Topography

This parcel is surrounded by wood land, wetlands and fields.

Surrounding tree coverage and foliage

There are no trees between the tower and Huggins Road.

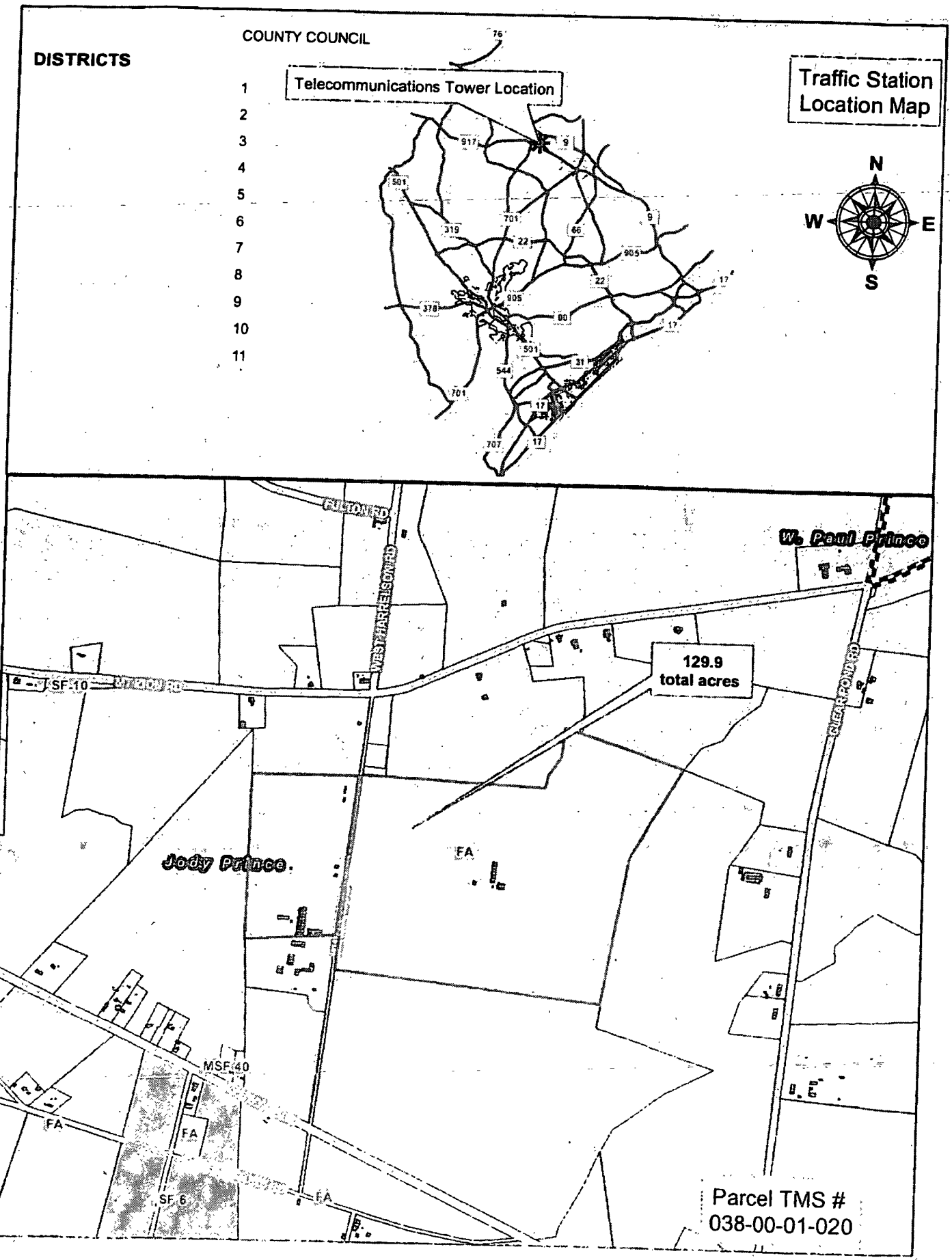
Design of tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness

The tower is designed as a 300ft self support tower. The applicant is proposing to landscape the site.

Proposed Ingress and Egress

Direct access is a 30ft access easement off Huggins Road.

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


DISTRICTS
COUNTY COUNCIL
1
2
3
4
5
6
7
8
9
10
11
Telecommunications Tower Location
Traffic Station Location Map
N
W
E
S
FULTON RD
WEST HARRISON RD
O'NEAL POND RD
W. Paul Prince
129.9 total acres
SF 10
MSF 40
SF 6
FA
Jody Prince
Parcel TMS # 038-00-01-020

HORRY COUNTY
PLANNING DEPARTMENT

1301 Second Avenue
Conway, South Carolina 29526

(843) 915-5340
(843) 205-5340
FAX (843) 915-6340

October 1, 2012

Dear Property Owner:

On October 16, 2012 at 6:00 pm, the Horry County Council will hold a public hearing on a request for a telecommunications tower. The hearing will be held in the County Council Chambers in the Government & Justice Building at 1301 Second Avenue in Conway. This notice is sent to you because you own property near the proposed request. Additional information of the proposed tower request is included along with a map.

If you are unable to attend the hearing and would like to comment on a particular telecommunication tower request, please submit your written comments as soon as possible. If we receive written comments early enough, we can include them in the packet of information that goes to the County Council Members before the hearing. This gives the members time to consider your comments prior to the tower hearing. Of course, written comments are welcome anytime.

If you have never been to a public hearing before and want to know what to expect? The meetings begin at 6:00 pm, when the Chairman calls the Council to order. The first items on the agenda are public input on agenda items that are not scheduled for public hearing, approval of minutes, and approval of the agenda. A portion of the meeting is devoted to resolutions and presentations. During the Public Hearings, the public may make comments on each individual request. If you have questions about a particular proposal, I suggest that you try to get your questions answered prior to the meeting. If you have comments of a general nature not related to a scheduled public hearing on a resolution or ordinance, please make them during the public input segment at the end of the meeting.

If you have questions about a particular proposal, you may wish to call the applicant/developer or his agent directly. Phone numbers for each applicant are included on the enclosed information. Also, please feel free to call me at (843) 915-7896 or 915-5340 with any questions that you may have about the request. They have been to the site, posted signs, made photographs, and are knowledgeable about the request. If you are unable to reach someone immediately, please leave a message, and he/she will call you right back.

Public hearings are usually well attended. The time that it takes for each hearing varies based on the number of people who want to make comments.

Occasionally, requests may be deferred by County Council. In order to track the status of a permit request, you may contact the Planning Department at the above numbers.

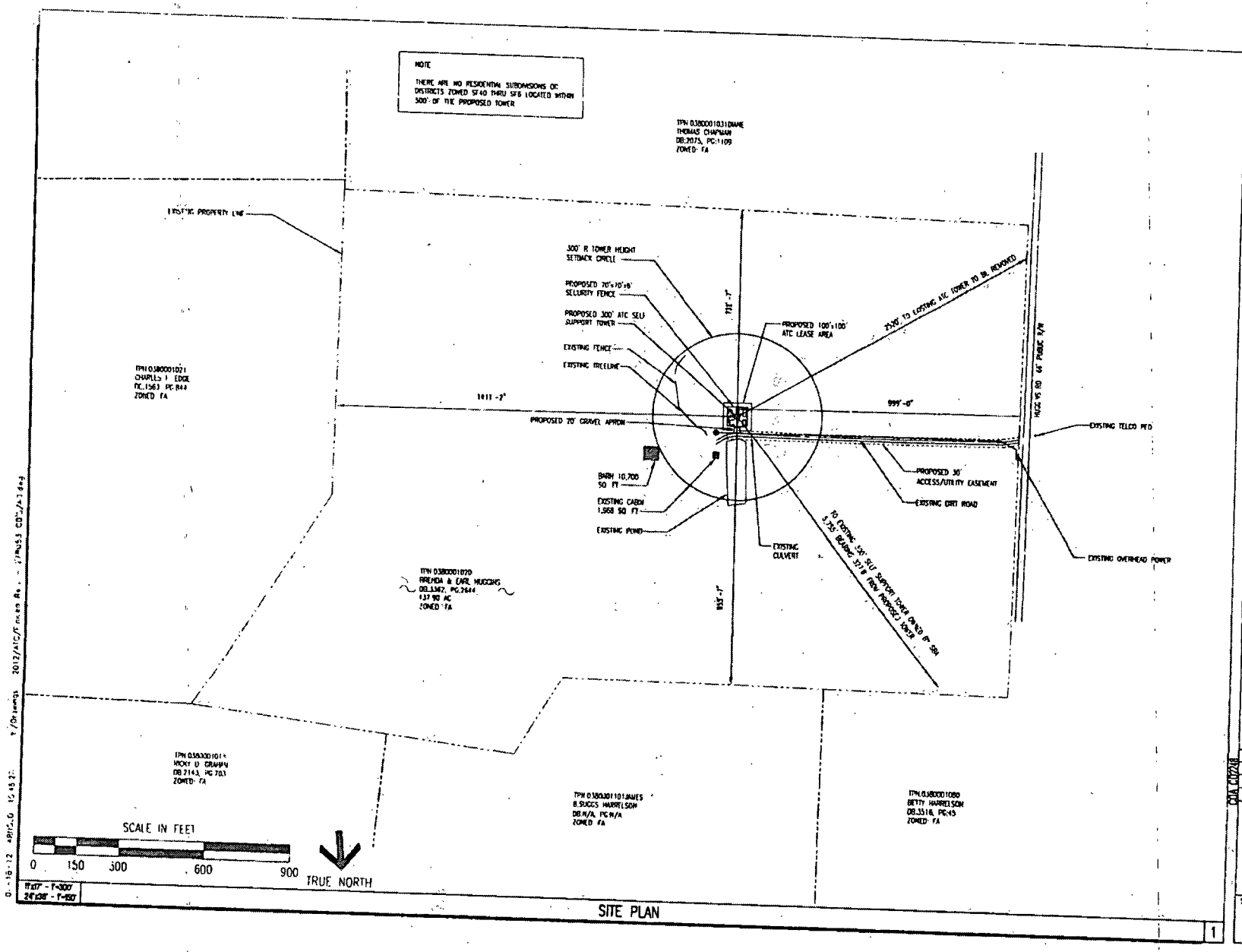
If you have other questions, please feel free to give me a call at (843) 915-5340.

Sincerely,

David Schwerd
Principal Planner

pbt

Attachments



AMERICAN TOWER CORPORATION
196 LONG POINT ROAD
MOUNT PLEASANT, SC 29464
TEL: (843) 971-6365
FAX: (843) 971-2889

THESE DRAWINGS AND/OR THE ACCOMPANYING SPECIFICATION AS INSTRUMENTS OF SERVICE, ARE THE EXCLUSIVE PROPERTY OF AMERICAN TOWER CORPORATION AND SHOW USE AND PUBLICATION SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH THEY ARE PREPARED. REUSE, REPRODUCTION OR PUBLICATION BY ANY METHOD, IN WHOLE OR IN PART, IS PROHIBITED EXCEPT BY WRITTEN PERMISSION FROM AMERICAN TOWER CORPORATION. TITLE TO THESE PLANS AND/OR SPECIFICATIONS SHALL REMAIN WITH AMERICAN TOWER CORPORATION WITHOUT PREJUDICE AND VISUAL CONTACT WITH THEM SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF ACCEPTANCE OF THESE RESTRICTIONS.

BC architects engineers
3601 COLUMBIA PKWY., SUITE 200
FALLS CHURCH, VA 22041-2000
TEL: (703) 671-8005
FAX: (703) 671-7520

SHEET REVISION

NO	DESCRIPTION	BY	DATE
1			
2			
3			
4			
5			

ATC SITE NUMBER:
278053
ATC SITE NAME:
FINKLEA RELO
SITE ADDRESS:
215 HUGGINS RD
LORIS, SC 29569

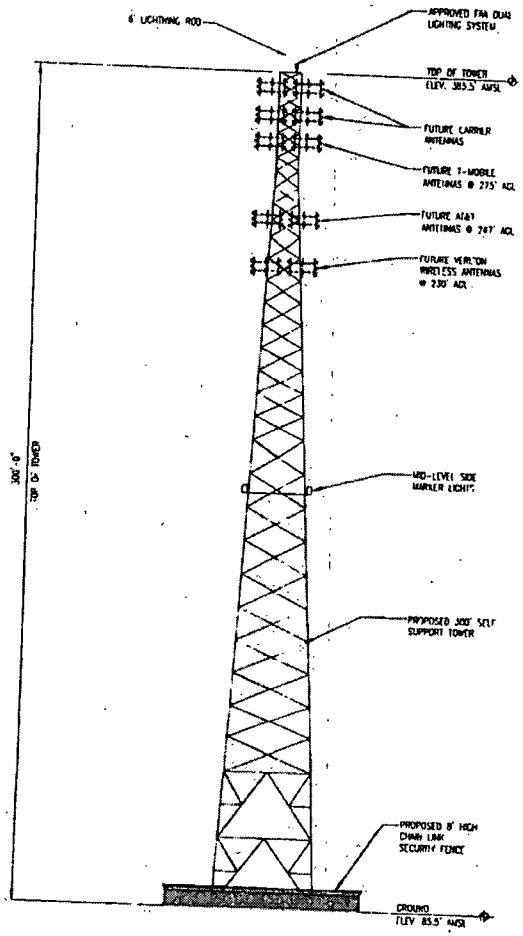
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SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 20052
07.24.12
CHRISTOPHER D HORN

DRAWN BY:	AGT
CHECKED BY:	CHS
DATE DRAWN:	07-24-12
SUBMISSION	FINAL CD'S

SHEET TITLE
SITE PLAN

SHEET NUMBER: A-0
REV: 1

ROA_0103



NOTE
PROPOSED TOWER WILL HAVE A GALVANIZED FINISH

SCALE IN FEET
0 10 20 40 60

1"=40'

TOWER ELEVATION

AMERICAN TOWER CORPORATION
996 LONG POINT ROAD
MOUNT PLEASANT, SC 29464
TEL (843) 971-8383
FAX (843) 971-8889

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BC architects engineers
3901 COLUMBIA PIKE, SUITE 201
FALLS CHURCH, VA 22041-2866
TEL (703) 671-4300
FAX (703) 671-4303

SHEET REVISION

NO	DESCRIPTION	BY	DATE

ATC SITE NUMBER:
278053

ATC SITE NAME:
FINKLEA RELO

SITE ADDRESS
215 HUGGINS RD
LORIS, SC 29569

STAMP HERE
SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 20052
07.24.12
CHRISTOPHER D MORIN

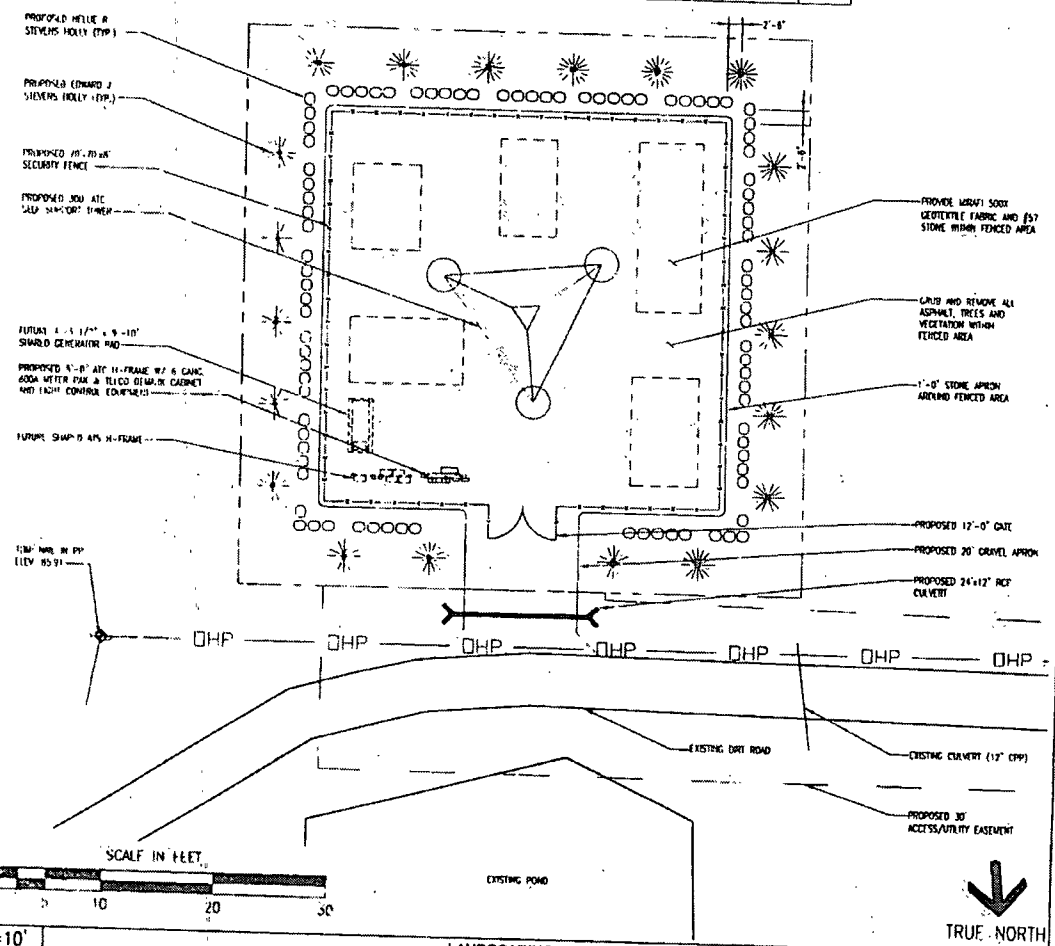
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CHECKED BY	DRS
DATE DRAWN:	07-24-12
SUBMISSION	FINAL CD'S

SHEET TITLE
TOWER ELEVATION

SHEET NUMBER: A-2
REV: 1

ROA_0105

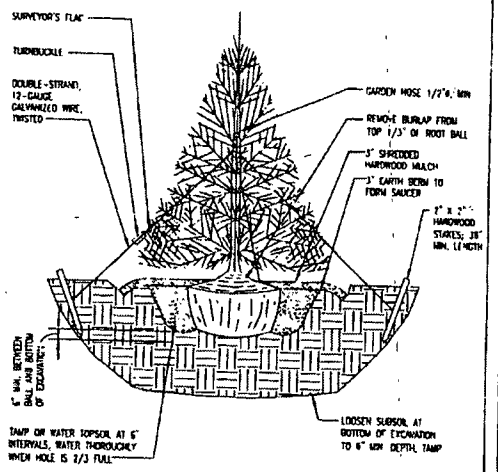
SYMBOL	QTY	BOTANICAL NAME	COMMON NAME	HEIGHT @ PLANTING	HEIGHT @ MATURITY	CALIPER SIZE @ MATURITY	SPACING
○	51	ILEX X 'NELLIE R STEVENS'	NELLIE R STEVENS HOLLY	2'-0" (MIN.)	20' MIN	1"-1.5"	25'
	20	ILEX X 'EDWARD J. STEVENS'	EDWARD J. STEVENS HOLLY	2'-0" (MIN.)	20' MIN	1"-1.5"	15'



1"=10'

LANDSCAPING PLAN

1



NOTE(S):

1. STEVENS HOLLY TREE SHALL REACH A MINIMUM HEIGHT OF 20 FEET AT MATURITY.
2. STEVENS HOLLY TREE SHALL BE PLANTED @ 2.5' ON CENTER IN THE BUFFER AROUND THE FENCED COMPOUND

N.T.S.

TREE INSTALLATION DETAIL

2

AMERICAN TOWER
496 LONG POINT ROAD
MOUNT PLEASANT, SC 29464
TEL: (843) 971-8385
FAX: (843) 971-8888

BC architects engineers
3601 COLUMBIA PIKE, SUITE 200
FALLS CHURCH, VA 22041-2888
TEL: (703) 671-9000
FAX: (703) 671-4305

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SHEET REVISION

NO	DESCRIPTION	BY	DATE
1			
2			
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6			

ATC SITE NUMBER:
278053

ATC SITE NAME:
FINKLEA RELO

SITE ADDRESS:
215 HUGGINS RD
LORIS, SC 29569

STAMP HERE:

SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 20052
07.24.12
CHRISTOPHER D. HORN

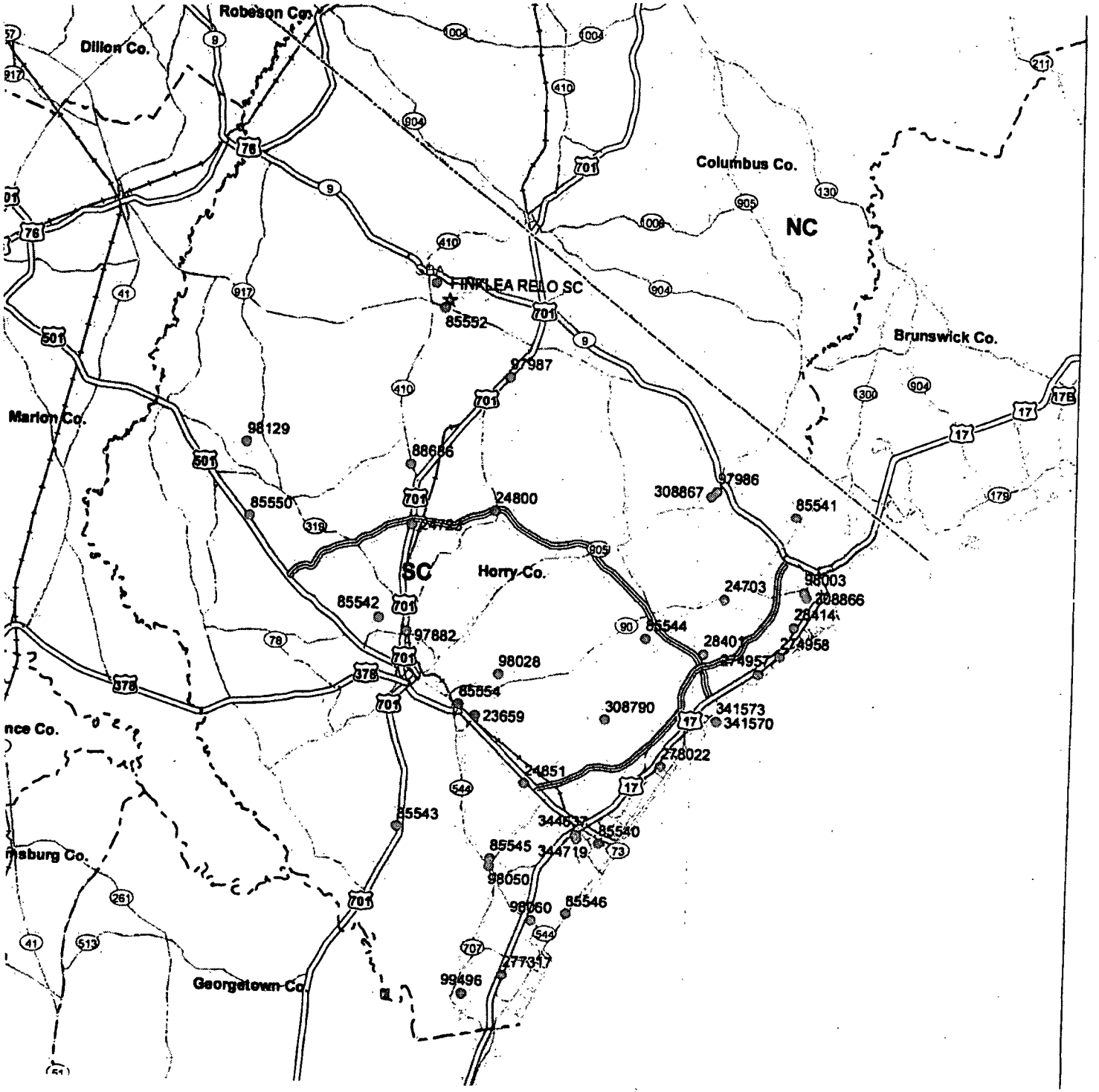
DRAWN BY	AGT
CHECKED BY	DWS
DATE DRAWN	07-24-12
SUBMISSION	FINAL CD'S

SHEET TITLE:

LANDSCAPING PLAN

SHEET NUMBER: L-1

REV.: 6



AMERICAN TOWER®

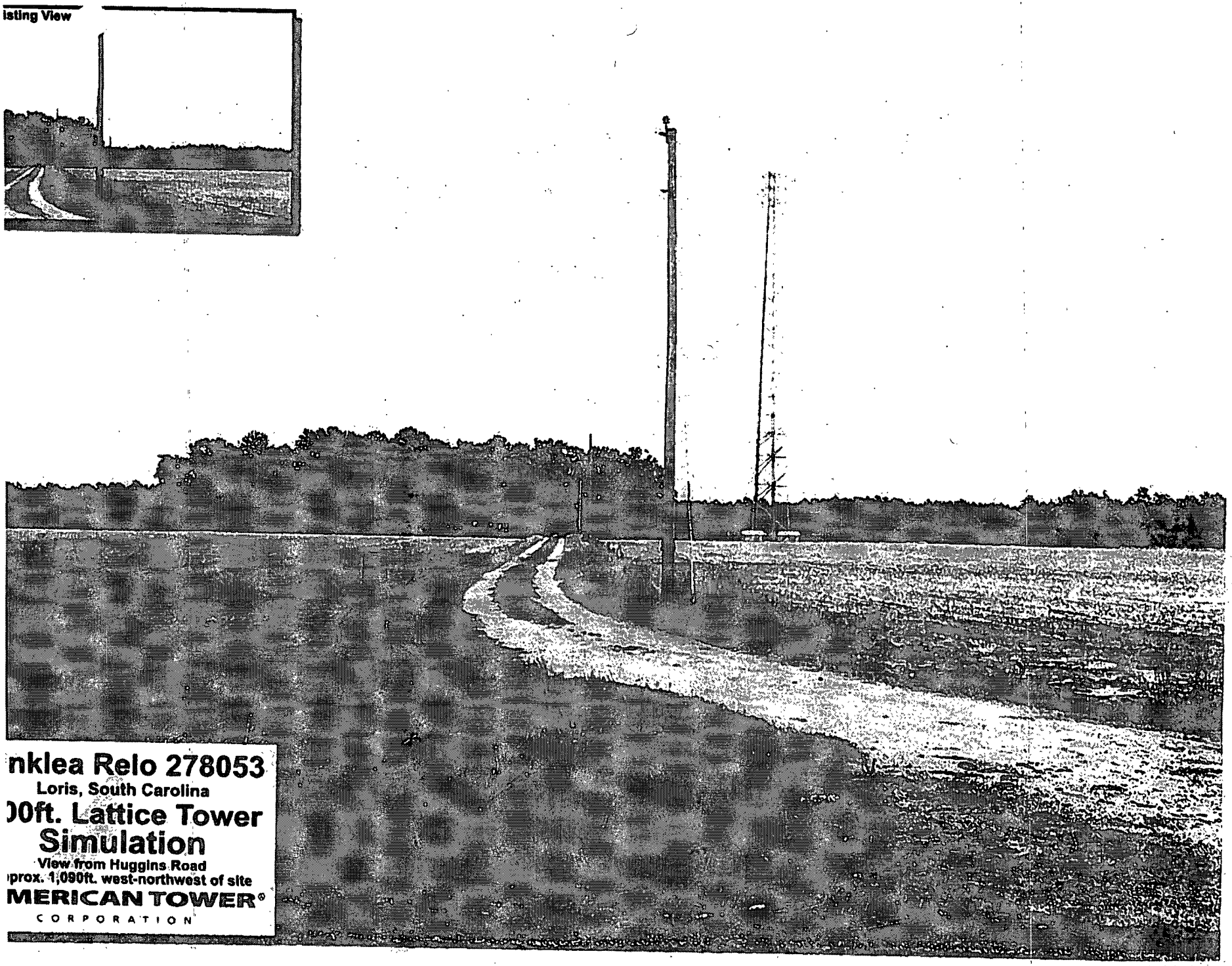
ATC Marketable Assets in Horry County, SC

N

1 in = 7 miles

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

ROA_0106


isting View
nklea Relo 278053
Loris, South Carolina
)0ft. Lattice Tower
Simulation
View from Huggins Road
prox. 1,090ft. west-northwest of site
MERICAN TOWER®
CORPORATION

SBA - 34° 6'39.57"N / 78°58'15.10"W
N
Proposed Finlea Relo - 34° 5'51.29"N / 78°57'38.39"W
TMS # 0380001020
410
917
9
Existing Finklea site - 34° 5'32.25"N / 78°57'59.36"W
© 2012 Google
Google earth
Date: 5/12/2011
1994
34°05'00.57" N 78°57'32.25" W elev 52 ft
Eye alt 12257 ft

HELLMAN YATES

ATTORNEYS AND COUNSELORS AT LAW

JONATHAN L. YATES
DIRECT VOICE 843 414-9754
JLY@HELLMANYATES.COM

HELLMAN & YATES, PA
145 KING STREET, SUITE 102
CHARLESTON, SOUTH CAROLINA 29401
V 843 266-9099
F 843 266-9188

August 31, 2012

Sep 4 2012

VIA FEDERAL EXPRESS

Mr. David Schwerd, Principal Planner
Planning & Zoning Department
Government & Justice Center
1301 Second Ave
Conway, SC 29526

RE: Proposed relocation by American Towers, LLC of 300-foot self support wireless telecommunications facility at the corner of Huggins Road and SC Highway 9 to 215 Huggins Road, Loris, SC 29569

Dear Mr. Schwerd:

Enclosed please find our check for $2,000.00 and the application of American Towers, LLC for the proposed relocation of an existing 300-foot self support communications facility currently located at the corner of Huggins Road and SC Highway 9. We are proposing to move the tower to a new property owned by Brenda G. Huggins at 215 Huggins Road, Loris, SC 29569. An aerial map showing the existing tower and proposed relocated tower is attached hereto as Exhibit "8" and incorporated herein by reference. We are requesting a Conditional Use Permit and a Telecommunications Tower Permit.

The existing tower was built by Vanguard Cellular in 1996 and was purchased by Triton PCS in 1999. In 2001 American Towers, LLC purchased the tower from Triton PCS. There are three existing tenants on the tower – T-Mobile, Horry Telephone, and Verizon Wireless. All three carriers have active contracts that obligate American Towers, LLC to provide them with tower space in this area. The ground lease is set to expire in 2013 and the new owner is not going to renew the ground lease. Therefore, we are proposing to relocate the tower, including all existing tenants, to the new location at 215 Huggins Road. The existing tower will be removed once all tenants relocate their equipment to the new tower.

We have taken the liberty of recasting the relevant sections of the Horry County Telecommunication Facilities Ordinance, found in Article XVI and Article VII, with our answer to the relevant section in bold font beneath the section. As will be evident from a review of the attached, American Towers, LLC has not only met, but has exceeded, all of the necessary requirements for approval under the Horry County Telecommunication Facilities Ordinance and the Telecommunications Tower Permits Ordinance. We greatly appreciate your time and consideration in the review of this application.

1607. - Application requirements.

A conditional use application and the supplemental information listed below shall be submitted prior to the issuance of a building permit for a telecommunication tower.

(a) Antenna Owner(s). Identification of the owner(s) of all antennas and equipment to be located on the site;

All of the antennas and equipment are owned by T-Mobile, Horry Telephone, and Verizon Wireless. Please see Sheets A-1 and A-2 of the Site Plans and Drawings, attached hereto as Exhibit "1" and incorporated herein by reference, for the location of the carriers' equipment.

(b) Engineer's Certification. The applicant shall provide certification from a licensed engineer, registered in the State of South Carolina, or other professional knowledgeable in telecommunications equipment, as shown by employment history, that the proposed facility will contain only equipment meeting the Federal Communication Commission rules and regulations;

Please see the letter of Jason Groseclose of American Towers, LLC, attached hereto as Exhibit "2" and incorporated herein by reference.

(c) Copy of all pertinent licensing and/or certification required by federal or state licensing authorities, which are required for said operators to said tower or facility.

Please see the FAA Determination of No Hazard to Air Navigation, attached hereto as Exhibit "3" and incorporated herein by reference.

(d) Location Map. A current County map showing the locations of the applicant's antennas, facilities, existing communication towers, proposed communication tower and any existing communication towers within two and one-half (2.5) miles of the proposed location (measured from the base of the tower);

Please see the inventory and map of existing American Towers, LLC sites, attached hereto as Exhibit "4" and incorporated herein by reference. In addition, please find A.S.R. search results showing all existing towers within 2.5 miles of the proposed relocated tower site on the property of Brenda G. Huggins, attached hereto as Exhibit "5" and incorporated herein by reference.

(e) A site plan, at a scale no less than one (1) inch = one hundred (100) feet, that illustrates the following:

1) A boundary survey of the proposed tower location site. (The site of the tower shall meet all survey requirements of the Horry County Land Development Regulations (Chapter 18 of the County Code} for Final Plats);
2) The location of all associated features to support the tower site such as equipment/switching cabinets, fencing, and parking;
3) The location of all support structures. The location of such features shall be entirely on the proposed tower site;
4) The location of any existing structure within fifty (50) feet of the proposed tower site or those that may be within the fall zone of the proposed tower;

5) Identification of the setbacks/fall zone for the tower;
6) Elevation drawings and/or photographs of proposed tower which illustrate the type and size of the equipment that the tower will support;
7) Screening and Landscaping;
8) Specifications. One (1) copy of specifications for proposed structures and antennas, including description of design characteristics and materials; and
9) Visual Impact Analysis. A line of site analysis showing the potential visual and aesthetic impacts on adjacent residential districts.

Please see Exhibit "1."

1611. - Specific design requirements.

All telecommunication towers permitted for construction shall adhere to the following:

(a) Height. Freestanding telecommunication towers, including concealed monopoles and stealth towers, shall be exempt from the height restrictions contained elsewhere in the zoning ordinance.
1) All new freestanding towers proposed to be located within five hundred (500) feet of a major residential subdivision or a residential zoned district (SF 40 thru SF 6) shall be limited to one hundred ninety-nine (199) feet or less in height. All other towers except those listed below shall be limited to three hundred fifty (350) feet in height.
2) The following types of towers shall be exempt from the three hundred fifty-(350) foot height cap for however they are subject to all remaining requirements of the Horry County zoning ordinance regarding telecommunication towers.
(i) Antenna support structures, antennas, and/or antenna arrays for AM/FM/TV/HDTV broadcasting transmission facilities that are licensed by the Federal Communications Commission shall be regulated in accordance with federal and other applicable local regulations.
(ii) Any cable television headend or hub tower and antennae used solely for cable television services.

The proposed relocated self support tower is 300 ft. a.g.l., located in the FA zoning district, and is not within 500 feet of a major residential subdivision or a residential zoned district (SF40-SF6), thus fully complying with the above provision.

(b) *Illumination.* Towers shall be illuminated as required by the Federal Communications Commission (FCC) and/or the Federal Aviation Administration (FAA). If allowed under FAA and other governmental regulations, alternatives to strobe lighting shall be used at night and lighting shall be shielded to ensure that lighting is focused toward the top of the tower;

The proposed relocated self support tower will employ a dual-lighting system approved by the FAA, as shown in Exhibit "3" and on Sheet A-2 of Exhibit "1."

(c) *Color.* Excluding stealth towers and unless otherwise required by the FCC or FAA, towers shall have galvanized finish or be painted with a silver or gray finish; All towers over one

hundred fifty (150) feet in height shall have a thirty-six (36) inch minimum stripe of either reflective tape and/or paint centered on the one hundred fifty (150) foot mark of the tower.

The proposed relocated self support tower shall maintain a galvanized steel finish, which quickly weathers to a dull gray patina. This is shown on Sheet A-2 of Exhibit "1." The proposed relocated self support tower will have the stripe at the 150 ft. mark as required above.

(d) *Signs.*

1) Commercial messages shall not be displayed on any non-stealth tower and/or antennae.
2) The only signage that is permitted upon a non-concealed antenna support structure, equipment cabinet, or fence shall be informational, and for the purpose of identifying the antenna support structure (such as ASR registration number), as well as the parties responsible for the operation and maintenance of the facility, its current address and telephone number, security or safety signs, and property manager signs (if applicable).
3) Where signs are otherwise permitted, a stealth tower may be concealed inside such signage, provided that all applicable standards for both the signage and the concealed tower are met.
4) If more than two hundred twenty (220) voltage is necessary for the operation of the facility and is present in a ground grid or in the antenna support structure, signs located every twenty (20) feet and attached to the fence or wall shall display in large, bold, high contrast letters (minimum height of each letter: four (4) inches) the following:

HIGH VOLTAGE - DANGER.

Signs for the purpose of identification, warning, emergency function, and contact will be placed as required by applicable state and federal law. Examples of such signs and other signs required by the FCC can be found on Sheet A-4 of Exhibit "1."

(e) *Security.* Freestanding communication towers and associated structures including ground anchors for guyed towers shall be secured by a fence or wall measuring at least eight (8) feet in height.

The proposed relocated self support communications tower and associated structures will be appropriately secured by means of a 70 ft. by 70 ft. chain link fence with a height of eight feet, topped with three strands of barbed wire as an anti-climbing device, for an overall fence height of nine feet, as shown on Sheets A-1 and A-3 of Exhibit "1."

(f) *Equipment Compound.*

1) Shall not be used for the storage of any excess equipment or hazardous waste (e.g., discarded batteries). No outdoor storage yards shall be allowed in a WCF equipment compound.

Applicant accepts and acknowledges this provision.

2) Shall not be used as habitable space.

Applicant accepts and acknowledges this provision.

3) A site plan proposal shall be provided to demonstrate how potential collocation equipment cabinets will be accommodated within the compound.

Please see Sheet A-1 of Exhibit "1."

(g) *Setbacks/Fall Zone.*

1) Setbacks shall be equal to one (1) foot for every one (1) foot of tower height or one hundred (100) percent of the tower's fall zone, plus a safety factor of ten (10) percent; whichever is less. Fall zones shall be certified in the form of a letter from a licensed engineer that includes the engineer's original signature and seal.

The proposed relocated self support tower's 300-ft. fall zone radius as based on the height of the tower is shown on Sheet A-0 of Exhibit "1." The fall zone radius lies well inside the Huggins property.

2) The fall zone shall not encroach onto structures on the same property or on to adjacent properties, unless the owner of the adjacent property or structure signs a waiver. The waiver shall be in a recordable waiver document and shall indemnify and hold the county harmless. In no case shall the fall zone encroach into a public right-of-way.

The fall zone of the proposed self support tower will not encroach onto structures on the adjacent properties, as shown on Sheet A-0 of Exhibit "1." There is an old cabin on the Huggins property that is used as a storage shed, which is inside of the 300 ft. radius. The cabin/shed is simply used for storage and not for human habitation. The memorandum of lease between American Towers, LLC and Brenda G. Huggins is attached hereto as Exhibit "6" and incorporated herein by reference.

(h) *Screening and Landscaping.*

1) The tower facility shall be landscaped and maintained with a buffer of plant materials that effectively screens the view of all tower accessory structures, equipment and other improvements at ground level. The buffer shall consist of evergreens no less than twenty-four (24) inches in height at the time of planting and spaced two and one-half (2 ½) feet on center along the fenced enclosure. Such plants shall be capable of reaching a height of no less than five (5) feet within two (2) years of planting.

2) In locations where the visual impact of the tower would be minimal, or where the requirements of this section are otherwise impracticable, the landscaping and screening requirements of this section may be reduced or waived by the Zoning Administrator. Existing mature vegetation and natural landforms on the site shall be preserved to the maximum extent possible, or replaced to present a natural, undisturbed appearance in keeping with the intent of this section. Examples of instances whereby the Zoning Administrator could waive the landscaping requirements are:

(i) If the tower facility is in a wooded area the applicant may choose to retain a natural vegetated buffer strip of undisturbed trees that is at least twenty-five (25) feet in depth, and at least six (6) feet in height, around the perimeter of the tower facility. The area should remain undisturbed in appearance, except where minimally necessary to allow for an access drive.

(ii) If the tower facility is located in an area that is under cultivation during the growing season, the planting of additional screening vegetation is not required. The intent of this subsection is to allow for the maximum use of productive farmland. In this instance it will be suitable to screen the fenced enclosure with green/brown fabric wrap.

In addition to the existing natural tree cover on the property, American Towers, LLC will plant 91 Nellie R. Stevens Holly trees and 20 Edward J. Stevens Holly trees around the lease area, which shall provide sufficient screening. These details can be found on page L-1 of Exhibit "1."

Sec. 13-73. - Criteria.

(a) County council shall consider the following in determining whether the request should be approved or disapproved.

(1) Height of the proposed tower;

The proposed relocated self support tower is 300 feet a.g.l., as shown on Sheet A-2 of Exhibit "1."

(2) Proximity of the tower to residential structures and residential zoning district boundaries;

There are no residential subdivisions or districts zoned SF40 through SF6 located within 500 feet of the proposed tower, as shown on Sheet A-0 of Exhibit "1."

(3) Nature of uses on adjacent and nearby properties;

The adjacent and surrounding properties are all zoned FA and are primarily used for agricultural purposes.

(4) Surrounding topography;

The surrounding topography is relatively flat, consisting of large agricultural lots with heavy perimeter tree cover and lots that have a heavy and mature tree cover throughout.

(5) Surrounding tree coverage and foliage;

The area is characterized by agricultural lots with heavy perimeter tree cover and lots that have a heavy and mature tree cover throughout.

(6) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and

The proposed 300' self support communications tower will be finished in a galvanized gray finish, which quickly weathers to a dull gray patina and will be non-reflective and emit no glare. Our site acquisition consultants have done an extensive line of sight analysis and have determined clearly and unambiguously that there are no potential visual and aesthetic impacts on adjacent residential districts from the proposed tower location due to the existing tree cover and the landscaping that will be planted. A simulation photo of the proposed tower is attached hereto as Exhibit "7" and incorporated herein by reference.

(7) Proposed ingress and egress.

Ingress and egress will be provided via an access easement from Huggins Road directly to the proposed relocated self support tower, as shown on Sheet C-1 of Exhibit "1."

(b) County council may approve a waiver of the co-location requirements of Section 1605 of the Horry County Zoning Ordinance (co-location waiver) when such waiver is justified and the applicant can supply proof that co-location is not practical or warranted, or if:

(1) Co-location requires an increase in height of the existing tower beyond the height restrictions imposed by Chapter 3 (Airports) of the Horry County Code of Ordinances; or

(2) Co-location requiring a significant expenditure (greater than fifty (50) percent of the tower and existing facility values) of funds to reconstruct the tower to accommodate the additional facilities to maintain safe operations. A claim of significant expenditure shall be shown in a cost estimate certified by a South Carolina licensed and registered engineer providing the current and reconstruction value of the tower; or

(3) Co-location is not possible due to technological incompatibilities of the proposed and existing telecommunication facilities. The technological incompatibility shall be documented in a letter certified by registered engineering or other professional knowledgeable in radio frequency technologies, as shown by employment history. The zoning administrator reserves the right to obtain a third party opinion regarding technological incompatibilities as a basis for co-location waiver.

This section is not applicable, as we are proposing to relocate an existing tower with existing leases. In order for T-Mobile, Horry Telephone, and Verizon Wireless to continue to provide the same level of service to this part of Horry County.

(c) The following information shall be provided justifying that co-location is not practical or warranted.

(1) A list of all existing telecommunication towers within two and one-half (2½) miles of the proposed tower (or within one and one-half (1½) miles for a monopole).

Please see Exhibit 4. The only towers shown by ASR are the existing American Towers, LLC tower, which will be removed, and a tower owned by SBA, which is over a mile from the Huggins property and will not accommodate the needs of T-Mobile, Horry Telephone, and Verizon Wireless for their relocation.

(2) Maps showing broadcast coverage from the proposed site together with the coverage from applicant's (or the wireless licensee's) existing sites that would connect with and are adjacent to the proposed site.

The coverage by T-Mobile, Horry Telephone, and Verizon Wireless will remain the same, as we are proposing to relocate an existing tower.

(3) Detailed information as to why the existing towers within two and one-half (2½) miles of the proposed tower (or within one and one-half (1½) miles for a monopole) cannot reasonably be utilized for the proposed antenna installation.

This section is not applicable, as we are proposing to relocate an existing tower with existing leases. The only towers shown by ASR are the existing American Towers, LLC tower, which will be removed, and a tower owned by SBA, which is over a mile from the Huggins property and will not accommodate the needs of T-Mobile, Horry Telephone, and Verizon Wireless for their relocation.

(4) Applicant shall provide any other relevant information related to the proposed site as may be requested; however, applicant shall not be required to provide complete coverage maps of its wireless system or other proprietary information.

American Towers, LLC accepts and acknowledges this provision.

We thank you very much for all your help and consideration. If you have any questions as you review, please contact me at (843) 414-9754, or e-mail me at jly@hellmanyates.com.

With warmest regards, I am

Yours very truly,

Jonathan L. Yates

JLY:edh
Enclosures

INDEX TO EXHIBITS

1. Site Plans and Drawings
2. FCC Compliance Letter by Jason Groseclose of American Towers, LLC
3. FAA Determination of No Hazard to Air Navigation
4. Inventory and Map of Existing American Towers, LLC Sites
5. ASR Search Results
6. Memorandum of Lease Agreement Between American Towers, LLC and Brenda G. Huggins
7. Photo Simulation of the Proposed Tower
8. Aerial Map Showing Existing Tower In Relation to Proposed Relocated Tower

AMERICAN TOWER®
CORPORATION

David Schwerd, Principal Planner
Horry County Planning & Zoning Department
Government & Justice Center
1301 Second Ave
Conway, SC 29526
(843) 915-7896

Re: American Towers, LLC, Site Name: Finklea Relo; Telecommunication Facility Application – FCC Equipment Letter

Dear Mr. Schwerd:

I am Jason Groseclose, Project Manager of New Tower Development Carolinas for American Towers, LLC. I have been employed with American Tower for 15 years managing wireless development. Please accept this letter to indicate that the proposed American Tower facility shall contain only equipment meeting the Federal Communication Commission rules and regulations, as set forth in Article XVI, Section 1607(b) of the Horry County Zoning Ordinance.

If you have any questions please do not hesitate to contact me at (843) 224-3778.

Applicant: American Towers, LLC

Acknowledged and Accepted

By: Jason Groseclose

Its: Project Manager - New Tower Development Carolinas

Date: 8/8/12

Cc: Jonathan L. Yates, Esq.

Mail Processing Center
Federal Aviation Administration
Southwest Regional Office
Obstruction Evaluation Group
2601 Meacham Boulevard
Fort Worth, TX 76137

Aeronautical Study No.
2012-ASO-6748-OE

Issued Date: 07/20/2012

FAA / FCC Department
American Towers, Inc.
1898 Leland Drive, Suite A
MARIETTA, GA 30067

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Antenna Tower 278053 FINKLEA RELO SC
Location:	LORIS, SC
Latitude:	34-05-51.74N NAD 83
Longitude:	78-57-39.23W
Heights:	86 feet site elevation (SE)
	315 feet above ground level (AGL)
	401 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

As a condition to this Determination, the structure is marked/lighted in accordance with FAA Advisory circular 70/7460-1 K Change 2, Obstruction Marking and Lighting, a med-dual system - Chapters 4,8(M-Dual),&12.

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be completed and returned to this office any time the project is abandoned or:

_____ At least 10 days prior to start of construction (7460-2, Part I)
__X__ Within 5 days after the construction reaches its greatest height (7460-2, Part II)

While the structure does not constitute a hazard to air navigation, it would be located within or near a military training area and/or route.

This determination expires on 01/20/2014 unless:

(a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
(b) extended, revised, or terminated by the issuing office.
(c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within

6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates , heights, frequency(ies) and power . Any changes in coordinates , heights, and frequencies or use of greater power will void this determination. Any future construction or alteration , including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

A copy of this determination will be forwarded to the Federal Communications Commission (FCC) because the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (847) 294-7575. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2012-ASO-6748-OE.

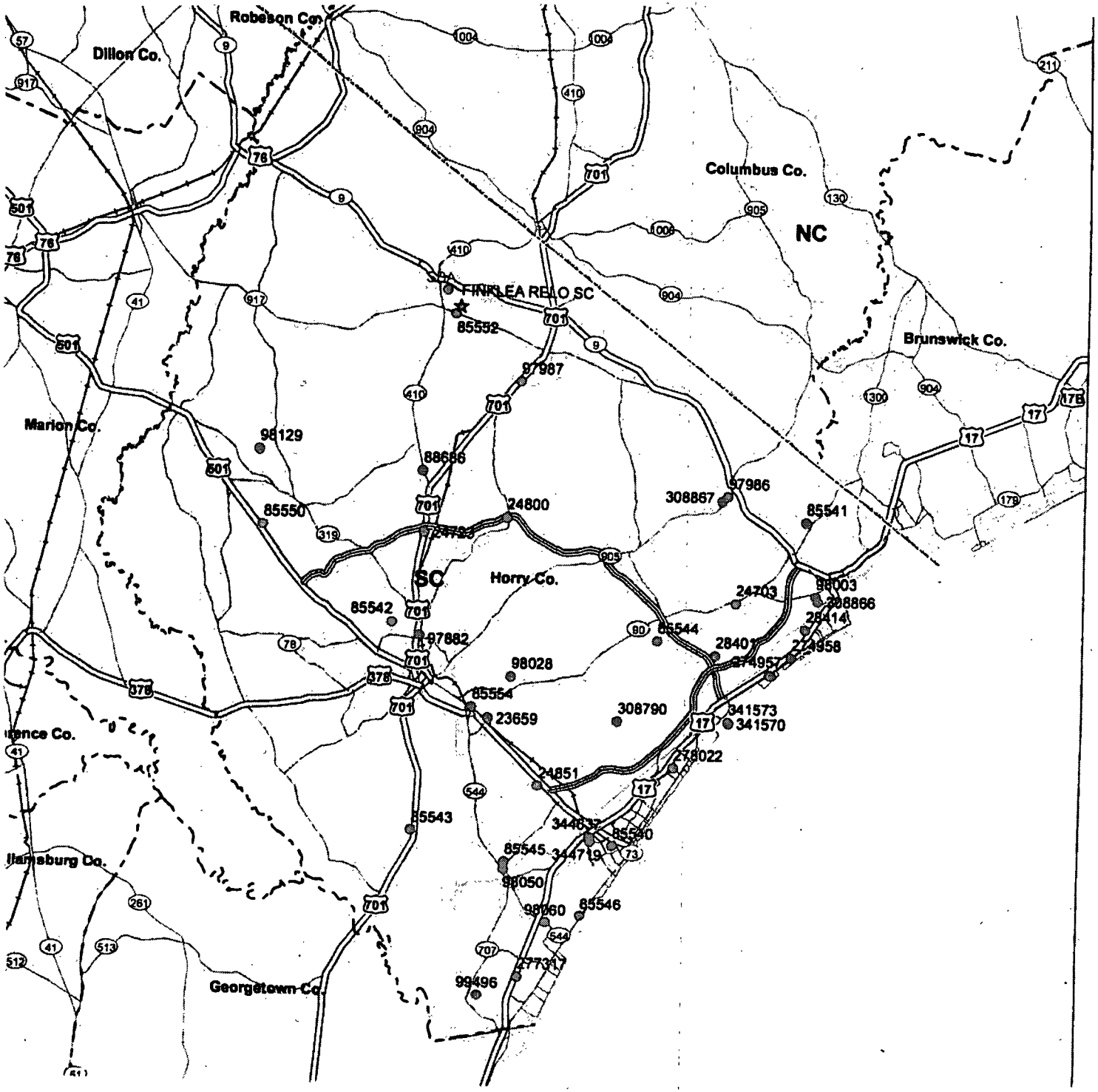
Signature Control No: 168719292-169420643 (DNE)
Vivian Vilaro
Specialist

Attachment(s)
Frequency Data

cc: FCC

Frequency Data for ASN 2012-ASO-6748-OE

LOW FREQUENCY	HIGH FREQUENCY	FREQUENCY UNIT	ERP	ERP UNIT
698	806	MHz	1000	W
806	824	MHz	500	W
824	849	MHz	500	W
851	866	MHz	500	W
869	894	MHz	500	W
896	901	MHz	500	W
901	902	MHz	7	W
930	931	MHz	3500	W
931	932	MHz	3500	W
932	932.5	MHz	17	dBW
935	940	MHz	1000	W
940	941	MHz	3500	W
1850	1910	MHz	1640	W
1930	1990	MHz	1640	W
2305	2310	MHz	2000	W
2345	2360	MHz	2000	W



AMERICAN TOWER®

ATC Marketable Assets in Horry County, SC

N

1 in = 7 miles

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

ROA_0122

Tower Number	Tower Name	Tower Status	Tower Type	Structure Height	Address	City	County	State	Zip	Latitude	Longitude
277317	SURFSIDE RESURRECTION SC	In Development	Monopole	150	8901 Highway 17 Bypass	Surfside Beach	HORRY	SC	29575-8845	33.60998	-79.011
278022	MYRTLE BEACH-LIVE OA SC	In Development	Monopole	150	820 67TH AVE N	MYRTLE BEACH	HORRY	SC	29572-3737	33.74442611	-78.83287
24851	LEGENDS 501 SC	Active	Monopole	152	Highway 501	Myrtle Beach	HORRY	SC	29579-6800	33.74707778	-78.96300556
274957	41ST AVE SC	Active	Stealth - Micropole	151	708 41st Avenue South	North Myrtle Beach	HORRY	SC	29582-5111	33.79976111	-78.72815556
274958	EDGE DRIVE SC	Active	Stealth - Micropole	145	1807 Edge Drive	North Myrtle Beach	HORRY	SC	29582-4017	33.80960833	-78.70464444
98028	RED HILL SC2	Active	Self Support	290	2092 Mike's Road	Conway	HORRY	SC	29526-7905	33.82872772	-78.97132111
99496	Surfside Beach	Active	Guyed	480	6201 Starbuck Lake Road	Murrells Inlet	HORRY	SC	29576-9819	33.60090278	-79.0512
97882	CONWAY/701	Active	Self Support	250	708 Country Club Drive.	Conway	HORRY	SC	29526-3990	33.86927414	-79.05038452
97986	LONGS SC	Active	Self Support	250	621 Castler Heights Road	Longs	HORRY	SC	29568-8339	33.93255615	-78.73891449
97987	LORIS	Active	Self Support	280	190 Beauty Ave.	Loris	HORRY	SC	29569-7313	34.03704453	-78.91621399
98129	Aynor SC2	Active	Self Support	250	North Of Hwy 32 On Vaught Road.	Gallivants Ferry	HORRY	SC	29544-6851	34.01916504	-79.17073822
98060	SURFSIDE SPLIT SC	Active	Self Support	220	2295 Dick Pond Road	Myrtle Beach	HORRY	SC	29575-5510	33.64632034	-78.97650909
98050	SOCASTEE	Active	Self Support	250	6279 Old Highway 544	Myrtle Beach	HORRY	SC	29588-7946	33.6903801	-79.00746918
98003	MYRTLE BEACH NORTH	Active	Monopole	158	469 Sandridge Road	Little River	HORRY	SC	29566-7537	33.85110833	-78.67233889
88686	GURLEY SC	Active	Guyed	313	GURLEY RS000 RADIO REPEATER ST	Aynor	HORRY	SC	29511-4329	33.985675	-79.021425
85540	CANNON ROAD SC	Active	Self Support	183	1455 Cannon Road	Myrtle Beach	HORRY	SC	29577-4310	33.69493611	-78.90254167
85541	BROOKSVILLE TRITON 1999 SC	Active	Self Support	283	2200 Shelley's Lane	Little River	HORRY	SC	29566-8661	33.90503889	-78.66907778
85542	CONWAY SC2	Active	Self Support	340	SSR 107	Conway	HORRY	SC	29526-4562	33.88167191	-79.07398224
85543	CARVERS BAY SC	Active	Self Support	183	Winburn Road	Conway	HORRY	SC	29527-7514	33.72928889	-79.08776944
85544	RED BLUFF SC	Active	Self Support	195	Edge Road	Longs	HORRY	SC	29526-7667	33.83753333	-78.82819722
85545	ROUTE 544 SC	Active	Self Support	189	3704 Forestbrook Road	Myrtle Beach	HORRY	SC	29588-8512	33.69578611	-79.00582222
85550	Aynor SC1	Active	Self Support	203	654 Pine Oak Farm Road	Aynor	HORRY	SC	29511-2858	33.96606111	-79.17901389
85552	FINKLEA SC	Active	Self Support	287	200 HUGGINS RD.	Loris	HORRY	SC	29569-8191	34.09256744	-78.95649722
85554	RED HILL SC1	Active	Self Support	181	180 Sanderson Drive	Conway	HORRY	SC	29526-8122	33.81193333	-79.01289444
85546	SURFSIDE SC	Active	Monopole	119	McMaster Drive	Myrtle Beach	HORRY	SC	29575-5875	33.64736176	-78.94313812
23659	Conway SC1	Active	Self Support	345	55 COMMERCE PLAZA, HUSTEAD ROAD	Conway	HORRY	SC	29526-8231	33.80189514	-78.99948889
24723	ADRIAN SC	Active	Self Support	254	3697 BAY WATER DRIVE	Aynor	HORRY	SC	29526-5759	33.94240833	-79.02964167
24800	WHITE OAK SWAMP SC	Active	Guyed	310	5743 New Dawn Lane	Conway	HORRY	SC	29526-6086	33.94340556	-78.95030556
28401	LONG BAY SC	Active	Self Support	250	6870 Water Tower Road	Longs	HORRY	SC	29568-7601	33.82020556	-78.77620556
24703	WAMPEE SC	Active	Guyed	302	2425 Long Bay Road	Longs	HORRY	SC	29568-7604	33.8556366	-78.74832222
28414	OCEAN BEACH DRIVE SC	Active	Monopole	152	540 Bay Street	North Myrtle Beach	HORRY	SC	29582-3241	33.828375	-78.68706389
308866	Crescent Beach	Active	Self Support	160	469 Sand Ridge Road	Little River	HORRY	SC	29566-7570	33.84728056	-78.6708
308790	Conway SC 6	Active	Guyed	600	1999 International Drive	Myrtle Beach	HORRY	SC	29526-8094	33.78460278	-78.8786
308867	Hwy 9	Active	Guyed	276.08	201 Hwy 905 South	Longs	HORRY	SC	29568-8362	33.92980833	-78.7449
341573	Embassy Suites Kingston Plantation	Inactive	Hotel	190	9800 Lake Drive	Myrtle Beach	HORRY	SC	29572-5349	33.77083333	-78.7747
344637	Coastal Grand SC RT	Inactive	Mall	0	2000 Coastal Grand Cr	Myrtle Beach	HORRY	SC	29577-4950	33.703991	-78.922391
344719	COASTAL GRAND IB SC	Inactive	Mall	0	2000 Coastal Grand Circle	Myrtle Beach	HORRY	SC	29577-4930	33.700501	-78.922405
341570	Myrtle Beach Hilton	Inactive	Hotel	204	10000 Beach Club Drive	Myrtle Beach	HORRY	SC	29572-5328	33.77	-78.7744

ROA_0123

Antenna Structure Registration

ASR Registration Search

Registration Search Results

Displayed Results

Matches 1-2 (of 2)
1

PA = Pending Application(s)

Specified Search

Latitude='**34-05-51.7 N**', Longitude='**78-57-39.2 W**', Radius=**4 Kilometers**

Display: Basic View GO

	Registration Number	Status	File Number	Owner Name	Latitude/Longitude	Structure City/State	Overall Height Above Ground (AGL)
1	1045545	Constructed	A0601942	American Towers, LLC.	34-05-33.2N 078-57-59.3W	Loris, SC	89.9
	1240462	Constructed	A0576132	SBA Towers Inc.	34-06-39.6N 078-58-14.9W	Loris, SC	93.8

Matches 1-2 (of 2)
1

Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Phone: 1-877-480-3201
TTY: 1-717-338-2824
Submit Help Request

Prepared by and Return To:
American Tower Corporation
10 Presidential Way
Woburn, MA 01801
Site #278053
Site Name: Finklea Relo

Cross Reference: Book: _____; Pg: _____

Memorandum of Lease Agreement

THIS MEMORANDUM OF AGREEMENT ("Memorandum") is executed this 28 day of June, 2012 by and between Brenda G. Huggins, an unmarried woman, with a mailing address of 215 Huggins Rd, Loris, SC 29569 ("Landlord") and American Towers LLC, a Delaware limited liability company, with a mailing address of 10 Presidential Way, Woburn, MA 01801 ("American Tower") and evidences that on the 28 day of June, 2012 a Lease Agreement ("Agreement") was entered into by and between Landlord and American Tower.

1. **Option**. The initial term of the Option is one (1) year from the date of the Agreement. This Option can be extended by American Tower for one (1) additional period of one (1) year and for such other periods as the Landlord and American Tower mutually agree.

2. **Property**. Landlord owns certain real property described in **Exhibit "A"** ("Property"). Subject to the terms of the Agreement, Landlord has granted to American Tower an option to lease a portion of the Property ("Compound") and to acquire certain easements for ingress, egress and utilities ("Easements" and collectively with the Compound, the "Site", as shown on **Exhibit "B"**), a license to use certain other portions of the Property and a right of first refusal to purchase the Site and/or the Property.

3. **Lease**. Should American Tower exercise its Option, the Agreement will constitute a lease of the Site. The initial term of the lease will be for five (5) years commencing

upon the date American Tower specifies in a written notice to Landlord. The Agreement will automatically renew for nine (9) additional periods of five (5) years each unless American Tower notifies Landlord of its decision not to renew the Agreement.

4. **Notices**. All notices, requests, demands, and other communications to the Landlord or American Tower will be made at the following addresses:

Landlord:	Brenda G. Huggins 215 Huggins Rd Loris, SC 29569
American Tower	American Towers LLC C/O American Tower Corporation 10 Presidential Way Woburn, MA 01801 Attn: Land Management
With a Copy to:	American Towers LLC C/O American Tower Corporation 116 Huntington Avenue Boston, MA 02116

5. **Construction of Memorandum**. This Memorandum is not a complete summary of the terms and conditions contained in the Agreement. Provisions in the Memorandum will not be used in interpreting the Agreement provisions. In the event of a conflict between this Memorandum and the Agreement, the Agreement will control.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first set forth above.

LANDLORD:

Brenda G. Huggins

Brenda G Huggins

Date: 6-1-12

WITNESSES

Danielle Gore

Print Name: Danielle Gore

Sherry Duncan

Print Name: Sherry Duncan

STATE OF South Carolina
COUNTY OF Horry

I, a Notary Public of the County and State aforesaid, certify that Brenda G. Huggins came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 1st day of June, 2012.

[Affix Notary Seal]

Danielle Gore
Notary Public
My commission expires:

DANIELLE GORE
Notary Public
State of South Carolina
Commission Expires Nov. 9, 2016

AMERICAN TOWER:

American Towers LLC, a Delaware limited liability company

By: _____

Name: STEVE VONDRAN
Title: Senior Vice President General Counsel

Date: 6/28/2012

WITNESSES:

_____

Print Name: Sebastian Konarski

_____

Print Name: REBEKAH L. VIEIRA

COMMONWEALTH OF MASSACHUSETTS)
) ss:
COUNTY OF MIDDLESEX)

On the 28 day of June, 2012, the undersigned notary public, personally appeared Steve Vondran, proved to me through satisfactory evidence of identification, which were ***personally known***, to be the person who name is signed on the preceding or attached document, and acknowledged that he/she signed it voluntarily for its stated purpose, as Senior VP General Counsel, of American Towers LLC, before me.

SEBASTIAN KONARSKI
Notary Public
Commonwealth of Massachusetts
My Commission Expires June 1, 2018

_____

Notary Public
My Commission Expires:

EXHIBIT B
SITE

See attached

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
20120CP-26-08652

COUNTY OF HORRY

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

-vs-

THE HORRY COUNTY COUNCIL and AMERICAN TOWER CORPORATION,

Defendant.

April 26, 2013

B E F O R E:

HONORABLE BENJAMIN H. CULBERTSON

A P P E A R A N C E S:

L. MORGAN MARTIN, Esquire
SUSAN P. McDONALD, Esquire
Attorneys for the Plaintiffs

THOMAS C. BRITTAIN, Esquire
EMMA RUTH BRITTAIN, Esquire
JONATHAN L. YATES, Esquire
DAVID C. SLOUGH, Esquire
Attorneys for the Defendant

Henry P. Young
Court Reporter

P-R-O-C-E-E-D-I-N-G-S

THE COURT: Now, what is it we have from Horry County?

MR. MARTIN: We have the hearing Judge, in connection with a cell phone tower permit that was granted by the county council.

THE COURT: Procedurally educate me. This is an appeal from?

MR. MARTIN: Appeal from the county council granting of a permit and a temporary injunction was ordered by the Court over in Conway back in December, I believe it was, and then this is the hearing in connection with whether or not the permit issued by the council can move forward or whether or not this court ought to deny that permit as improperly granted.

THE COURT: Procedurally what do we do? Is it just reviewing what they did or is this what happens?

MR. BRITTAIN: Well, if we can speak up, I represent American Tower. I think the law is real clear you have a very limited role here. Quite frankly, it is an abuse of discretion standard and based on what took place with Horry County Council. The cases are very clear on it, the Vulcan case

decided by the Supreme Court, you are limited to the record.

THE COURT: Okay. Is there a record in this?

MR. BRITTAIN: Yes, we have, Miss Brittain here for the county has circulated the transcript and the application and the things that would constitute the record. Miss McDoanld and I discussed this several times and I have come to the conclusion, I think she has too, we talked about it again, that the law is pretty clear that is simply a review that you have of the record that was below. The complaint was filed, a timely appeal was made by Mr. Martin's client, I mean Miss McDonald's client, and the injunction didn't get into the merits of the case, it was just sort of to freeze everything until this appeal could take place. So --

THE COURT: But procedurally this is just like arguing an appeal?

MR. BRITTAIN: Yes.

MS. McDONALD: Yes, Your Honor.

THE COURT: Who is appealing the decision of the county council?

MR. MARTIN: That is our client, Miss Johnson and Tristar is appealing the decision of the county

council.

THE COURT: All right. Let me go ahead and put on the record this is case number 2012-CP-26-8652, Tristar Investors, Inc., Minerva Realty, LLC, and Angeline Johnson versus the Horry County Council and American Tower, LLC, before the Court on an appeal from, an appeal from an action of the Horry County Council, correct?

MR. MARTIN: Correct.

THE COURT: Okay. Please give the court reporter your name and who you represent in this case.

MR. MARTIN: Well, I will begin. Morgan Martin, and I represent Tristar Investors and Angeline Johnson who was the plaintiffs in the underlying action.

THE COURT: All right.

MR. MARTIN: Or this action, I'm sorry.

MS. McDONALD: Your Honor, I'm co-counsel for all the plaintiffs and that includes Minerva Realty as well which is a related entity of Tristar.

THE COURT: Okay. Both of you all represent all the plaintiffs or you just represent --

MR. MARTIN: Yes.

THE COURT: Okay.

All right. Who have we got?

MS. BRITTAIN: Your Honor, Emma Ruth Brittain, I'm here for Horry County.

MR. BRITTAIN: Your Honor, Tommy Brittain, I'm here for American Towers, LLC.

This is Jonathan -- why don't you introduce yourselves?

MR. YATES: Jonathan Yates for American Tower, LLC.

MR. SLOUGH: David Slough with Nexsen Pruet, also for American Tower.

THE COURT: All right. Now, for purposes of the appeal who is going to be arguing?

MS. BRITTAIN: Your Honor, I will be arguing on behalf of the county.

MR. BRITTAIN: I will be arguing on behalf of American Tower, LLC.

MR. MARTIN: And I'm going to do primarily the argument for Miss Johnson and Tristar, and Miss McDoanld may also become involved, Your Honor.

THE COURT: Okay. All right. Well, I'm going to allow a little bit of leeway but it is not going to be three attorneys arguing for one client.

MR. MARTIN: We're not going to abuse the process.

THE COURT: All right. Now, first of all let's go ahead and get on the record, because this is an appeal in Horry County, we are in Georgetown, everybody waives any type of venue so we can, waives venue so we can go ahead and hear it here, is that correct?

MR. MARTIN: Yes.

MS. BRITTAIN: That's correct, Your Honor.

MR. BRITTAIN: Yes.

THE COURT: Okay. All right, anything preliminary before we get into argument? If not, Mr. Martin, let me hear from you.

MR. MARTIN: Your Honor, if it please the Court, let me try to set the stage for you as best I can. Of course what is at issue is there was a resolution passed by the Horry County Council dated the 16th of October, 2012, which is Resolution R73-12 which is a resolution to approve a permit, a resolution to permit a freestanding communications tower in Horry County. The application had been filed to permit a new 300 foot tower, communcations tower on a parcel of land identified by certain tax map number, and Horry County resolved or approved that permit, as I said, on October 16, 2012, and we're before the Court to ask that the Court find

that permit was not properly or was improperly granted and should not be valid to move forward on.

The basis for that is this. The Horry County Code has certain provisions which govern the granting of a permit for a new telecommunications tower. It also has provisions which are relevant if you are putting up a new tower and there is already a tower within two and a half miles of the proposed tower. In order to do that you've got to get a waiver from the council.

I can only assume that that's part of the law because they don't want so many of these cell phone towers dotting the community and they want to have some control and regulation over them because there are, as you will see in this particular case, more than one tower company that wants to be involved in the building and ownership and operation of towers.

So, with that having been said, American Tower in this case made application to Horry County Council for a permit for a new tower and it is our contention that they did not provide nor follow and that the county council did not require them to provide the information and the proof that a new tower was in the terms of the statute, quote, practical -- strike that. That the continued use

of the old existing tower was, quote, neither practical nor warranted, which that is what the ordinance requires that the council find in order to allow the permitting of this new tower.

Section 16-05 of the Code -- well, let me start this way. Section 13-73 of the Horry County Code says that council cannot waive unless an applicant can show through proof that the proposed location is neither practical nor warranted.

THE COURT: Say that again. Read that to me again.

MR. MARTIN: All right. Section 13-73(C) which says that -- well, actually 13-73(B) says the county council may approve a waiver of a code location, waiver of Section 16-05 when such waiver is justified and the applicant can supply proof that the co-location is not practical or warranted. We think in other words that the existing tower cannot be used practically and that a new tower be permitted and built is warranted. Because what you have got in this situation is that there was, there was an existing tower on the property of Angeline Johnson and American Tower had been operating that tower and you have got three other cell phone carriers that used it, Horry Telephone, Verizon and

T-Mobile and there was an agreement or a lease from Miss Johnson to American Tower and there was in fact, we know that there was an extension of that lease that Miss Johnson granted American Tower that they could continue to utilize this tower until 2030.

That is, I think, one of the areas of contention that we're dealing with here. That lease is recorded at the Horry County courthouse. It gives American Tower, the folks who were looking for the permit for the new tower, the right to extend leases on the old tower until 2030.

One of the issues we have is in their application and letter to county council for the new tower, they say that they, if I can find that language for you, that essentially that the ground lease is set to expire, quote, "The ground lease is set to expire in 2013 and the new owner is not going to renew the ground lease." We believe that that is a misleading statement. First of all the ground lease clearly, the first time there could be any expiration of it would be 2015 and the question of whether or not it could go forward past that, I don't think there is any determination as to that and here is why.

What happened in this process is that our client Tristar went to Miss Angeline Johnson and they bought an easement from her, bought her rights to this property and the tower. Now, at the time they did that the extension of the lease that American Tower had gotten from Miss Johnson, as we understand it, it had not been recorded and was not of record.

So, what happened is Tristar here took Miss Johnson's, she gave them the right to operate the tower and control the easement. Of course she is still getting paid. They paid her for that and she would continue to get paid, so her interest in this is if they quit using that tower and take it down as this permit would allow American Tower to do, then she would lose income as a result of all that. And in trying to figure out, obviously they can speak for why they did what they did and how they did it but what it appears to us is that once they learn that Tristar had an interest in the tower they wanted to have nothing else to do with that tower and they wanted to build a new tower.

THE COURT: You're talking about American Tower?

MR. MARTIN: American Tower, that's right.

They wanted to build a new tower. So in order to do that they've got to get a permit and they made an application for a new tower as the ordinance requires them to do.

THE COURT: American Tower, you said they were leasing from Miss Johnson?

MR. MARTIN: They were.

THE COURT: Okay. And that lease is still ongoing.

MR. MARTIN: Yes.

THE COURT: But they have a problem with Tristar stepping in?

MR. MARTIN: And I'm going to ask Miss McDonald to correct me if I'm wrong on these details but yes, that's right, I mean, I don't know that I can say why they did what they did, I can only guess since these folks are competitors there is probably some concern there. Now that Tristar had some interest in the tower that they were using and had been using since '95 to allow the cell service in the Finklea area of Horry County, again they go and make application to county council for a new permit.

And as I said, to start that, we think it kind of gets off on the wrong foot because they say

the ground lease is set to expire in 2013. I don't think that is accurate, it's 2015 at the earliest and frankly it may not expire until 2030. I think that is important because, you know, have they got to build a new tower in order to provide cell coverage, for the carrier to at least have a tower to hang their equipment on, to hang their equipment on to provide cell coverage? We think the answer is no.

This gets kind of down to the guts of what our argument is, and that is that the statute requires that they, the applicant, must prove to council, in laymen's terms, you can't use the old tower, that the continued use of that is not practical.

THE COURT: Well, you have to educate me. How long does it take to get a tower built and operational, if it is a case they are going to lose service in 2015 but it takes five years to build one, I don't know, I'm ignorant on this process.

MR. MARTIN: Well, my understanding is that you are probably talking about a couple months to build a tower.

THE COURT: To get it operational?

MR. MARTIN: To get it operational. I know

in this particular case the permit says they would take down the old tower and gave them 120 days to do that.

THE COURT: So, they are taking down the existing tower?

MR. MARTIN: That's right.

THE COURT: Okay.

MR. MARTIN: The permit application had an amendment to it at council which it would be taken down, which again we believe to be a problem because that directly affects the property interest and the right of both Angeline Johnson and Tristar and what we're saying is, is that there is a prescribed set of rules that you have got to go by to get a permit for a new tower when there is already a tower in place. That calls in this co-location waiver that has to come and which can only be granted by the county council upon the establishment of certain facts and we say those facts were not established here and therefore even though it is a governing body and a county council, they can't just do anything, they have to, like everybody else, follow the rules and here they did not follow the rules because American Tower did not and we believe could not establish that the

continued use of the existing tower was not practical or warranted.

THE COURT: Let me ask you this, excuse me for interrupting. Every ordinance you have referred to concerning building a tower or getting a waiver to build another tower, I'm assuming this first tower was permitted by the county?

MR. MARTIN: It was, yes.

THE COURT: Does that permit expire or what is the authorization for the county to have that tower taken down?

MR. MARTIN: Well --

THE COURT: Or can they do that?

MR. MARTIN: I think that is a good question. Let me say the permit doesn't expire.

THE COURT: Okay.

MR. MARTIN: At least as I understand it. They got a permit and it will last right on. Generally, and I think that is the situation in this case, if Miss Johnson and American Tower or Tristar and American Tower and all of them, they could agree for American Tower to continue to use that site, if they could and if they would and it would last, and it could go right on. As far as the county is concerned the permit of the tower

doesn't run out.

Miss McDoanld points out to me if you read Section 13-73(C)(3), let me find that, that probably has to do with the taking down of the tower. Is that what we're talking about?

THE COURT: What I'm trying to get my hand around, is this a case where the county is replacing a tower and therefore they are taking business from one person and giving it to another, or is this a case where the county is authorizing two competing businesses to co-exist and it is not practical for both of them to exist?

MR. MARTIN: I think what they are doing, Judge, is through this permit they are allowing a new tower to be built and ordering another one to be taken down which does take business from Angeline Johnson and Tristar, our clients.

THE COURT: Does the record express any reason why they are making that decision?

MR. MARTIN: Here is what the record expresses on that. If you look at 13, let me direct your attention to 13-73(C), it says the following information shall be provided justifying that co-location is not practical or warranted, so it sets out what you need, what American Tower

needed to tell the Horry County Council.

THE COURT: I mean, what I got from your argument, this is not co-location but it is replacement?

MR. MARTIN: But it is, the way the code is written Let me say this now. If you prescribe to put up a new tower within two and a half miles of an existing tower, then you've got to put it up before you take it down, okay?

THE COURT: I see.

MR. MARTIN: Now, you also need to know that there was already another existing tower within that two and a half mile radius and what is referred to as an SBA tower, which was there, not being utilized but had never been taken down.

THE COURT: What is an SBA tower?

MR. MARTIN: It is just a name but it is just another tower that at one time apparently was used for this same purpose.

THE COURT: Okay.

MR. MARTIN: So, there is, they've got to have a co-location waiver. And of course Miss Janet Carter is here and she pointed that out to council at the meeting that in order to grant this permit they had to have a co-location waiver

because there was these two existing towers already there and in order to do that you've got to, in order for council to be able to legally or lawfully do that they've got to take the information that is provided under 13-73(C), which says, number one, a list of all existing communication towers within two or two and a half miles of the proposed tower. I think they had the two towers that were there.

And it then says that maps showing broadcast coverage, and this is what council is supposed to look at, maps showing broadcast coverage for the proposed site, together with coverage from applicant's existing site that would connect with and are adjacent to the proposed site.

The record does not show that that was presented by way of application or at a hearing and council never had an opportunity to consider that and of course we contend that the reason that is important is you've got to be sure that if you get the new tower that it still provides the coverage you need or necessary service such as 911 even if it is not for the individual phone users.

Under sub category three it says detailed information as to why the existing towers within the two and a half miles of the proposed tower

cannot be reasonably utilized for the proposed antenna installation.

Once again, there is, there is nothing in the application or nothing in the presentation to council that pointed out why it can't be used, the existing tower, certainly as to up to 2015 and frankly as to 2030. I mean, there was nothing put in there says we have got to leave other than their statement in application that says, "And the new owner is not going to renew the ground lease." There was no, we think, proof of that fact that was entered in the record and that that matter is yet to be determined as to whether or not they could or could not do that.

And then fourthly, it says applicant shall provide any other relevant information related to proposed cite as may be requested.

Now, from what we can see, the only information that was given to council as justification for the granting of the new permit and the taking down of the old tower in which our clients have substantive property rights and interest was this what we believe is at best a misleading statement that it is going to expire on 2013. That is not accurate.

Secondly, that the new tower doesn't meet Article 16 of the Code as relates to how far it has to be off the road but that's not relevant because the existing tower is grandfathered in and nobody had any complaint or the county council had no objection about that, so if you were going to build a new tower you couldn't build it right where the existing tower is but that existing tower was grandfathered in and it was there and has been used for 15, 20 years and could be used right on.

There is just a blanket statement that, "We've got to move," which we believe is inaccurate. "We have found a very good site that the Huggins family owns," and they never addressed the old SBA tower that frankly has to be addressed, we believe.

So, we think whatever standard you use, and we have a couple cases relating to whether abuse of discretion or exactly how the Court looks at that, you know. We believe that the law shows that the actions of county council just can't be capricious and arbitrary and without following the ordinances that they are prescribed to follow which clearly here they just didn't do, they just didn't do. There was nothing that was presented to them that

would allow them to say that this existing tower can't be used.

THE COURT: I understand. Now, you're appealing, I understand you're appealing the permitting of the new tower. Is that correct, and I'm assuming, correct me if I'm wrong, you're also appealing the taking down of the old tower?

MR. MARTIN: That is correct.

THE COURT: What is it that mandates that?

MR. MARTIN: This is the same resolution, the resolution which permits the new tower requires --

THE COURT: This is all done by resolution?

MR. MARTIN: Correct, in this instance that is the way it is done, it requires that the old tower be taken down, so it is kind of a double whammy to our clients, they're going to build a new tower and they are going to take down the one we've got a property interest in and --

THE COURT: Let me ask you this. Who is going to take it down?

MR. MARTIN: American Tower is going to take it down.

THE COURT: Okay.

MR. MARTIN: They own, they -- well, no, they didn't put up that tower, it was put up a long time

ago, I think I'm right about that, but they told county council they would have it down in 120 days.

THE COURT: They are leasing the property?

MR. MARTIN: They are leasing the property.

THE COURT: They own the tower?

MR. MARTIN: Correct.

THE COURT: Okay.

MR. MARTIN: There is no problem with that, I mean, they are not doing anything they shouldn't do, but the other thing, Judge, I want to be sure I mention to you while I am talking here, what you do have here, as I mentioned to begin with, you have these three carriers, Horry Telephone, T-Mobile and Verizon, and what is going to happen is there was, you know, I think it was said in the meeting that they are all willing to move from that tower, their equipment. I mean, they have all got equipment, so they are impacted by the fact they are going to have to move their equipment over to the new tower.

THE COURT: So this is basically a case of American Tower just wants to build a new tower in a new location and the existing customers are going to come with them?

MR. MARTIN: That's right. Well, that is what they want to do and they say, "We can bring

the existing customers with us."

THE COURT: I got you.

MR. MARTIN: Of course obviously what we're saying is we don't, I mean, there was nothing presented to council that any of these companies were on board or not on board. Now, it was advertised but again it's going to cost probably three to five hundred thousand dollars to accomplish what is being done here.

THE COURT: And I understand that but the basic argument is who is going to be getting the lease money, correct, isn't that the argument? If Miss Johnson and Tristar owned the new property where the new tower was going there wouldn't be an argument, and I'm not saying you don't have grounds for the argument, but isn't that what created the conflict, you now have a new property owner that is leasing them property?

MR. MARTIN: Yes, and Tristar and American Tower are at odds with one another, to be quite frank with you, they are business competitors in some manner but you are exactly right. What happened here is, this is our position, is that American Tower says, "Okay, we aren't going to ask anybody about anything, we aren't going to deal

with anything," they filed a lawsuit suing Miss Johnson and Tristar for breach of contract, damages and different things. "We're just going to go get us a new permit and build us a new tower and we'll leave Miss Johnson and Tristar out in the cold and we'll teach them to mess with us."

THE COURT: All right.

MR. MARTIN: And we just don't think they can do that and we don't, certainly don't think that they can do that, that council can grant them a new permit when they don't go through and provide the information that is legally required to justify such a major move such as this.

THE COURT: I understand. Okay.

All right, who wants to go first?

MS. BRITTAIN: Your Honor, if I may, on behalf of the county.

THE COURT: Miss Brittain.

MS. BRITTAIN: First of all this is a decision of the Horry County Council and I think to clear up the record from the beginning, to put things in perspective, this was a relocation permit, not a co-location permit, and basically it is our understanding the tower is owned by American Tower and under their lease obligations they are

required to take it down at the end of the lease term and it is their property. They came to the county and actually submitted an application for relocation.

THE COURT: Is there a different ordinance you go under for a relocation?

MS. BRITTAIN: No, sir, there is not, but the way it was analyzed by staff was that because the standing tower is being located to another location the language relied on by Mr. Martin relating to co-location does not apply. There is some testimony by Miss Carter in the record before council that even if it did apply it was a prudent thing to do, and I can point out several facts in the record that support that.

But it was a relocation, they had a permit and they wanted to move their operations. There is information in the record from David Schwerd who is a principal planner with Horry County, that he received the application for relocation, the application was submitted by letter on August 31, 2012, from Hellman Yates law firm. In that letter they clearly say, "Please find enclosed our check for $2,000 for the proposed relocation of an existing 300 foot self support communication

facility." In this document that is in the record the application goes through the applicable ordinance provisions and provides detailed information in response to each provision of the ordinance that apply.

THE COURT: So you're saying since it is a relocation --

MS. BRITTAIN: Yes, sir.

THE COURT: -- then there is no, they don't have to show that the existing tower cannot reasonably be utilized?

MS. BRITTAIN: Right. They are willing to spend the money and take it down and put another one up somewhere else.

THE COURT: I understand.

MS. BRITTAIN: I would like to touch briefly on the grounds mentioned about it. You know, this is a practical or warranted test. There is information in the record from Mr. Schwerd that this new tower will service at least five if not more carriers, whereas the old tower services three. The new tower meets the requirement of Article 16, Section 16-11, zoning ordinance which was enacted after the old tower was built, therefore the old tower does not meet current

zoning requirements and the new tower will. The fall radius of the proposed relocated tower is in a much better position than the old tower which is close to the adjacent highway, thereby advancing public safety interest, and the relocation application, the Code provisions were deemed to have all been met.

This went in front of county council, there is a video archive on the Horry County Council website where you can watch the hearing live, a reference was made to at least one of the carriers being in the audience, they were there for something else, there was no disapproval or concerns stated by any of the current carriers.

THE COURT: Excuse me for interrupting you but as I understand the argument is your, your client's argument is, "This is not a co-existing tower, it is a relocation so we can basically move it because we just think it is better to move it and we don't have to show that the old one cannot reasonably be utilized"?

MS. BRITTAIN: That's correct.

THE COURT: Their argument is there is a co-existence so you have to show the first one is deficient.

MS. BRITTAIN: That's correct. We feel like this is well within the discretion of the council. When it approved by resolution the granting of a relocation permit there was some discussion in the record about co-location then but it ended with a statement by Miss Carter, was the amendment that the old tower would come down in 120 days if necessary, it would be the applicant is required to remove the existing tower that they are relocating within 120 days and I think there is a translation problem there but it is in in the video, the old one is to be taken down within 120 days of final inspection and approval of the new tower.

THE COURT: Excuse me for interrupting again but I'm assuming from your argument, then, there will not be any, the towers will not be used at the same time. In other words, is it one of these when we switch services this one will cease to be used totally and this one will be used totally and there is not going to be any co-service going on between the towers?

MS. BRITTAIN: That's correct, the service is being moved with the tower.

THE COURT: I see, okay.

MS. BRITTAIN: That is basically our

argument. I can go into length on other issues but we do, in the submittals we entered into the record we cite several cases. Rush versus the City of Greenville has a good discussion. It is not exactly on point in that I believe it involved an ordinance as opposed to a resolution approval but the Court noted the deference afforded a municipal decision, that it afforded great deference, that while the Court might disagree, if it is not illegal or violates the law then it should be upheld, it is not a matter of substitution of the Court's judgement unless there looks to be some type of arbitrary or abuse of discretion or violation of some legal or constitutional right. And there are many cases that follow the same deference to counties' decisions in the area of permitting and we would urge the Court to take a look at those. We have supplied some with our submittal in the record.

THE COURT: I understand.

All right. Mr. Brittain.

MR. BRITTAIN: Yes, sir, thank you, Your Honor.

May it please the Court, if I could go back just briefly and sort of bring this point forward?

This is, His Honor and this Court has probably the most powerful jurisdiction in South Carolina, Circuit Court. You hear some of everything, you make all kind of decisions and some of them are crucial and on a variety of issues, but you have a very limited role here.

The toughest standard or the greatest leeway given in our whole judicial system is the one that is applicable here and that is arbitrary, obvious, the cases say, obvious abuse of discretion. And why is that the case? Because we're trying here in 30 minutes to get you back into a situation that involves cellular tower companies, leases, proximity of towers, when the legislative body had months to look at it, lawyers to review it, engineers to examine it, site inspections to make, and then they take all that information over the course of several months and put it into a process, a formal application process which is reviewed.

In this case the planning and zoning department made the recommendation after doing all that work. You don't have a staff to do it, you don't have the time to do it and you don't have the research resources to do it.

Then it went in front of county council, and

to their credit they gave Tristar and Miss Johnson every opportunity throughout that process to participate, make the argument they are making to you to them so that there could be a full and free hearing even though they may not have been required to.

That took place and you will see, if you look at the transcript where Miss Carter spoke on and on and on about these issues. Now, one thing happened in this record, Judge, that you might never have seen before. The county council voted unanimously. I don't think, I have been in Horry County since I was a little boy, I don't believe I have an independent recollection county council of Horry County has voted unanimously on anything.

But after hearing all the questions, hearing all the engineers, the people that it talked to, to a man, every single one of them voted for this relocation. It is not for this Court to get into these issues. I would suggest I don't have a better friend in the world than Morgan Martin but a lot of the things you have heard so far this morning, they are not in this record. You've got a transcript and an application and that is what the Court should review.

I can tell you all about what has happened with my company and these carriers that would make you feel good about what has happened here but I can't do that because it wasn't in this record and, by the way, that's a decision for our county council to make as part of a legislative function. What is so good about this situation for us is this is not a zoning board or building inspector like Mr. Strange. It's in our ordinance, it is our council members, the actual elected officials of the people with Miss Carter who has broad experience.

The great thing about the coastal counties, they have sophisticated staffs to deal with these issues and that is why great deference is given to them. In fact, there is a real issue here with Tristar's involvement in this state. In 2008 the South Carolina Supreme Court decided these competing business interests got them here, between my clients and Tristar. If you listen to what Mr. Martin says you will hear what has happened here.

Miss Johnson is out there with a piece of property, my client have an arrangement with her. All of a sudden here comes their business competitor, they start taking to Miss Johnson,

there is a tower there, they get into the situation and try to come on and claim, "Hey, since we got up underneath you here we want to keep your tower, we will charge you money for your tower," but that is not for you to decide. Those legal issues are being fought all across this country. Your question here is whether our council followed normal procedures and exercised their discretion. That is the test, because they certainly did.

Now, the American Towers case says, the Supreme Court in 2008, "We're not going to let business competitors come before the Circuit Courts and fight about these permitting issues." We have cited that case in our brief, and by the way, our client was the one that was challenging an action by Charleston County and the Supreme Court said no.

So, Tristar, they are on very shaky ground in this proceeding as far as standing is concerned. Miss Johnson, Miss Johnson who had an underlying lease would not be a business competitor in the American Towers case we cite but the Vulcan case is the one that serves as a real limitation on Circuit Court involvement in these matters. But having said all that, since we have gone over and are talking about relocation and co-location, let's

talk about it for just one second as to how it actually is functioning.

An existing tower owned by American Tower LLC. Miss Johnson is the underlying tenant. And really it is ironic because if in the 2030 lease extension, in the underlying lawsuit part of the record, Tristar, Miss Johnson claims that doesn't, they don't want that, they didn't want that extension to go forward, they wanted the lease to be of shorter duration. All that, Morgan says, is still out there somewhere, so what difference does that make in what has taken place here?

But the real question here is, is it a relocation or a co-location. It would fit under either one, it is a relocation but let's say that this Court was going to get down into the body of this thing and say, "You know what, I will make county council consider this a co-location. Even though it really is probably a relocation, I'm going to insist that they consider it a co-location."

Here is what you have happening. This tower, when the other one gets built, and by the way, it is in the middle of a 137 acre piece of property, way off the roadway and has service capability of a

broader nature than the tower that is existing. You couldn't build a tower like the one that exists now because of its proximity to Highway 9, but what will happen, as soon as this permit goes forward the old tower will come down, okay, so what does that leave you with?

There is no co-location. There is no co-location. You see, the co-location premise and public policy would be of course to reduce the number of towers. If Morgan says assume that, certainly that makes sense. Why would it not apply here? Because there is not going to end up any more towers. That is why it truly is a relocation.

Now, Judge, I tell you, I believe strongly this is purely a matter for the legislative function and the things you have heard today and eloquently put by two fine lawyers, they had a place back at the county council process, at the hearing, in the application process procedure, and by the way, they sought a rehearing. As part of this record when this permit was granted Tristar and Miss Johnson, they sought a rehearing in front of council and that would have been the place and the time to bring these matters forward. They withdrew that request and now we're here in a forum

where you haven't heard any evidence, we haven't been in here to testify to you about when the lease is going to start, when the lease is going to end, because that is not the posture the Court is in.

If the record wasn't great below, that is what it is. Where this Court would come in, let's say the argument was there is some crooked stuff going on down there, so and so did such and such, that is what obvious abuse of discretion is. To get into whether a co-location, relocation, what the submittals were, we've got them here.

I want to introduce all our exhibits that we say constitute the record. I have a copy for Mr. Martin and Miss McDonald, I want to give you a brief that we have come up with that deals with the issues that we are discussing here, that we think the Court should consider as far as its determination, but for the Court to substitute its judgment here would be going way beyond what your very busy duties are.

So, if I could approach and hand these documents up.

THE COURT: I've got the transcript and the record on appeal that is in the file.

MR. BRITTAIN: I have the application which I

would introduce it to you but if you don't want to consider it that's fine.

THE COURT: I will let you proffer it, we'll mark it as a proffered exhibit but I'm just going to go on what has been submitted as far as the record on appeal.

MR. BRITTAIN: All right, sir. Let me just proffer what I have considered but I don't think any of it is necessary for our position other than what you're considering but it would be the application and all the documents associated with that and the answers associated with the complaint for the injunction.

THE COURT: All right, we can do that collectively.

MR. BRITTAIN: Yes, sir.

THE COURT: As, I guess that would be defendant's, American Tower, LLC, Exhibit 1 that is being proffered but it is not going to be considered by the Court. I'm going by the record on appeal, the transcript that is in the clerk of court's file.

(Application and answer to petition for injunction marked as Defendant's Exhibit 1).

THE COURT: all right, anything else?

MR. BRITTAIN: No, sir.

THE COURT: Anything in reply, particularly as to whether or not this is a relocation or co-location, is what I'm looking for.

MR. MARTIN: Judge, I'm happy to address that. This is a co-location. They want to call it a relocation and it may be in practical terms a relocation but in the law of Horry County, in the ordinance that is set forth it is a co-location. It has to be dealt with as a co-location.

THE COURT: Let me ask you this. American Towers, LLC, owns the tower, correct?

MR. MARTIN: Correct.

THE COURT: All right. You are saying before they can relocate and build a new tower they have to show that their existing tower is deficient?

MR. MARTIN: Correct.

THE COURT: Okay.

MR. MARTIN: And that is not because we say so, Judge, and that is why I disagree with my friend Tommy here about what they can do. What they want you to do, they want you to stay out of it and let them handle it. Well, I don't think it works that way, you know, because the statute, the ordinance, I keep saying statute, but the

ordinances deal with this and nowhere in there will you find the term relocation. You can do such and such if it's a relocation.

Section 16-05 says specifically if you're going to put up a new tower, a new tower, and this is a new tower under the ordinances, any way you look at it, then you've got to get a co-location waiver, and if you will go to the transcript of the hearing before the Court, in council Miss Carter, as Mr. Brittain points out, they have staff, they looked at this, they reviewed it, sophisticated council, Miss Carter points out to the council on page 19 of the transcript, "The only thing that I think I would point out in terms of our ordinance is council has to, if there is another tower within a two and a half mile radius of the existing tower that they could co-locate on they have to explain why it is not practical or feasible for them to do so."

So, the county's attorney without question is correctly saying this is a co-location issue and and you've got to deal with it and the application of American Tower concedes that, and it is important because you are --

THE COURT: Wait a minute. How does the

application --

MR. MARTIN: They address Section 13-63 and 16-05 of the code section which deal with relocation. Of course that is not part of the record before you -- I'm not sure whether it is or isn't, maybe it is not there, and I want to say this. We're happy for you to deal directly from the record that you have. We don't want you to go outside and to do anything different than that but the fact of the matter, Judge, is that they have to follow the rules as set forth in the ordinances for everybody to have due process or equal application of law and that includes Miss Johnson and Tristar and those rules are set out --

THE COURT: How is Miss Johnson not protected? She's got a lease, she can't be granted any powers greater than what is existing under the lease. I mean, if they take the tower down and move, if she's got a lease they are still obligated under the lease, aren't they?

MR. MARTIN: Not necessarily.

THE COURT: How can they terminate a lease?

MR. MARTIN: Well, I'm not sure what they'll do but what I can tell you is this, because this goes in, again, facts that are outside the record

but if that tower stays on her property she stands to make significantly more money than she would under the existing lease she has with American Tower.

THE COURT: How so?

MR. MARTIN: Well, because she's got a better deal with Tristar, to be quiet frank with you. Now, that is getting outside the record and that is a whole --

THE COURT: But I mean the fact of the matter is Miss Johnson has an existing lease that is legally binding on the parties to that lease.

MR. MARTIN: Well, but it may, if the lease may well say so long as the tower is operational on your property.

THE COURT: Well, then that was a consideration at the time she entered into the lease.

MR. MARTIN: Exactly, exactly, and so if she enters into the lease in her world or Tristar enters into a business agreement with her based on the law in South Carolina and Horry County has these ordinances, they know, they know that in order to relocate, co-locate, in other words, to build a new tower and take down ours you've got to

go by certain rules and if they did that we wouldn't be here today but they did not do that. They clearly didn't do that and you can look, the presentation that was made to them is in the minutes of the meeting and you can see that 13-73 was not complied with, it was not complied with and it must be complied with. It is just like he, it is just like, as Mr. Brittain says, your role is limited, and I agree with that, but it is very important and I know you didn't try this case, you know, it is like a search warrant, they can't get a search warrant unless they follow the rules, you are not the investigator, you didn't investigate the crime, you didn't draw up this or that, but you have to, there are certain rules you've got to go by to get a search warrant and to get a case to a jury, to get past the directed verdict, and in this case there are certain rules that you've got to comply with as prescribed by the county council to put up a new tower and if you will look at the resolution, it doesn't say a word about this is a relocation of an existing tower, it says this is a permit to build a new tower because that is the way it has to be done under the ordinances that are in place there in the county.

THE COURT: All right. I think I've got a hold on it.

MS. BRITTAIN: Your Honor, may I address that quickly? Miss Carter's statement to council, I would like to point out that the statement read by opposing counsel related to the resolution in front of the council which did not have the 120 day language in it and so Miss Carter was pointing out that as currently stated that resolution would be interpreted as a co-location tower but she continued, she said, "Let me explain why," and she stood up at the end of the hearing that went on, "Some of the language is missing and that is why I recommend the video, archived video," but she later on, after the quote, Martin's quote is on page 19 of the transcript, go to page 20.

THE COURT: Hold on a second. All right, I have the transcript here. Let me go ahead and open it.

All right, where are you, now?

MS. BRITTAIN: Page 19.

THE COURT: All right.

MS. BRITTAIN: And Mr. Joseph Prince states, "I'm ready to vote," and the chairman Mr. Rice said, "Well, we have some other people who want to

discuss it," and Miss Carter speaks below about the co-location issue, and she actually, as you read through that, she talked about co-location, "You have authority to grant a waiver," and go on to the next page, page 20, she said, you know, she even thought they, it would be prudent to, they would be prudent if they did it that way, but if you go on down to the middle of the page, "I would say we would be, since we didn't include the requirement to remove the old tower within 120 days of final approval of the new tower, I mean final approval of the new built tower, we would need to include that in the resolution and you would want to make an amendment if you're going to approve that." And what she is talking about there is the 120 day requirement to remove it because the application does provide that it is a relocation application.

Then if we move on, Mr. Prince said, "I move to amend and say that," and Miss Carter says, "You would need that requirement," and the chairman asked, "Would you please state the amendment, Miss Carter," on page 21, and Miss Carter replies, "The amendment would be that the applicant is required to remov

discuss it," and Miss Carter speaks below about the co-location issue, and she actually, as you read through that, she talked about co-location, "You have authority to grant a waiver," and go on to the next page, page 20, she said, you know, she even thought they, it would be prudent to, they would be prudent if they did it that way, but if you go on down to the middle of the page, "I would say we would be, since we didn't include the requirement to remove the old tower within 120 days of final approval of the new tower, I mean final approval of the new built tower, we would need to include that in the resolution and you would want to make an amendment if you're going to approve that." And what she is talking about there is the 120 day requirement to remove it because the application does provide that it is a relocation application.

Then if we move on, Mr. Prince said, "I move to amend and say that," and Miss Carter says, "You would need that requirement," and the chairman asked, "Would you please state the amendment, Miss Carter," on page 21, and Miss Carter replies, "The amendment would be that the applicant is required to remove the existing tower, that they are relocating, within 120 days of final inspection and

approval of the new tower."

Mr. Joe Prince so moved, unknown second, and then they continue on with the dialogue.

So, Miss Carter clarified the record that the recommendation of the staff be approved as a relocation permit with the old tower to be taken down within 120 days.

THE COURT: All right.

MS. BRITTAIN: Thank you, Your Honor.

THE COURT: Mr. Martin, any response to that.

MR. MARTIN: Judge, please read the record of all that. You are reading page 20, Miss Carter says again to grant a co-location. It is a co-location.

THE COURT: Yes, but didn't she bring up and say, "Look, if we don't address taking down the old tower then you're dealing with a co-location"?

MR. MARTIN: No, I don't think that is what she said. They've got to deal with a co-location because that is all the ordinance allows. If you will read the transcript you will see throughout that that they are dealing with a co-location, I believe, but I mean, I can argue it to you but I would suggest you just read that portion of the transcript --

THE COURT: I will.

MR. MARTIN: -- and you will see that it's a co-location because that is what the ordinance requires them to do and that's the reason they are talking about it. If it didn't, you wouldn't hear the word co-location, it would all be relocation, "We don't need a waiver," they can just move it. And that is the way they wish it was.

THE COURT: Well, is there an ordinance that deals with relocation or it is just a permitting for a new tower?

MS. BRITTAIN: Your Honor, it is just a permitting consideration within the perameters of the current ordinance.

THE COURT: I got you.

MS. BRITTAIN: And the other tower that was mentioned, just so there is no confusion on that, the SBA, that tower had been built, to our knowledge we don't know if it was ever used, it is not even in operation now and when it was built it was built on a waiver from the tower that is to be relocated, so it is an exception.

Thank you, Your Honor.

MR. BRITTAIN: It is something that you can think common sense wise as this industry grows and

as time goes by, this is not something out of the ordinary, you are going to have these towers that are too close to the road, this is part and parcel of the overall process of permitting.

THE COURT: All right. I understand, I will take it under advisement and let you all know.

MS. McDONALD: Thank you, Your Honor.

MS. BRITTAIN: Thank you, Your Honor.

(Hearing concluded).

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
20120CP-26-08652

COUNTY OF HORRY

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

-vs-

THE HORRY COUNTY COUNCIL and AMERICAN TOWER CORPORATION,

Defendant.

May 31, 2013

B E F O R E:

HONORABLE BENJAMIN H. CULBERTSON

A P P E A R A N C E S:

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Henry P. Young
Court Reporter

P-R-O-C-E-E-D-I-N-G-S

THE COURT: All right, this is case number 2012-CP-26-8652, the case of TriStar Investors, Inc., Minerva Realty, LLC, and Angeline Johnson versus the Horry County Council and American Towers, LLC. The matter is before the Court on a motion for Supersedeas by the plaintiffs. Please give the court reporter your names and who you represent.

MS. MacDONALD: Your Honor, Susan MacDonald and Morgan Martin representing the plaintiffs in this matter TriStar Investors, Minerva Realty and Angeline Johnson.

THE COURT: All right.

MS. BRITTAIN: Your Honor, Emma Ruth Brittain here on behalf of the Horry County.

MR. BRITTAIN: Tommy Brittain, I'm here on behalf of American Towers, LLC.

MR. YATES: Jonathan Yates on behalf of American Towers, LLC.

THE COURT: All right, thank you.

Miss MacDonald, this is the plaintiffs' motion?

MS. MacDONALD: Yes, Your Honor.

THE COURT: All right, I will hear from you.

MS. MacDONALD: Your Honor, I would like to, I know we sent some things email yesterday afternoon and --

THE COURT: I got them.

MS. MacDONALD: You got them, okay.

THE COURT: Sure did, thank you.

MS. MacDONALD: I have another copy for the file if you need it.

Your Honor, this is our motion for Supersedeas that we bring under Rule 62 of the South Carolina Rules of Civil Procedure and Rule 241 of the South Carolina Appellate Court Rules, and in order to save time, I understand, I know the Court has heard from us probably more than they want to but just in terms of background on the merits, we have appealed your order, Your Honor's order in this matter and as such since it was a denial of injunctive relief the rules require that we now make a motion for Supersedeas and I'm not going to go back over the merits of the background because I think at this point that really isn't at issue. The only thing at issue is what the rule requires in order for you to grant Supersedeas and then if you decide what bond is appropriate.

Your Honor, the normal course of events in an

appeal is that a judgment is stayed. The reason the rule or at least my view of the reason the rule makes differentiation between certain exceptions is with a money judgment it is easy to know what your delay costs, it's just a matter of function of the interest of the money judgment.

In an injunctive relief case it is not so simple so there needs to be an added layer and in this case, Your Honor, we would say that the judicial steps here to determine if it is appropriate is obviously is it appropriate to keep the status quo in order to make sure that the appellant has their full rights at issue, they will completely keep their full rights.

We look at, we quoted the Graham case which is, in which the Court of Appeals essentially talked about what Supersedeas is all about and it says that Supersedeas really is to preserve the status quo pending the determination of the appeal and preserve the appeal and the fruits of a meritorious appeal where they might otherwise be lost to them.

This isn't a case, Your Honor, where the movant has to show, as in a TRO, likelihood of success on the merits or likelihood of success on

the appeal. The plain language of Rule 241 is essentially that if not keeping the status quo would render the appeal moot then the judge should enter a Supersedeas. And in this case, Your Honor, our argument is, number one, what is the status quo? And number two, that it would make our appeal moot if you did not keep the status quo. And I'm sure that our opponent will argue concerning the status quo but it seems fairly clear that the status quo in this case is keep the tower right where it is.

THE COURT: Okay. Explain to me again, if we leave the tower right where it is, it is under a lease, what is -- wait a minute, let me get it, I want to make sure I get it right. Under this status quo what are TriStar Investors, Inc., and Minerva Realty, LLC, getting right now with that tower where it is?

MS. MacDONALD: Your Honor, we are the beneficial owner of that easement, so the rent of that tower actually flows to us.

THE COURT: Okay. So if I don't grant a Supersedeas, then basically they lose the rent.

Now, under the current lease, I know your argument goes on for another thirty years or

whatever but it is five year renewals?

MS. MacDONALD: Yes, Your Honor.

THE COURT: So, when is the next renewal?

MS. MacDONALD: In 2015 is the end of the lease that is in place, with an extension to 2030 and I believe it would be 2021 if they exercise that.

THE COURT: If who exercises?

MS. MacDONALD: American Tower.

THE COURT: If American Tower chooses not to exercise it?

MS. MacDONALD: Then they can abandon that site.

THE COURT: But they can't provide phone service to that area ever again as long as that tower is working?

MS. MacDONALD: As long as, Your Honor, our position is, and they do take the position that they can tear it down now if they want to but our position is TriStar has the right to rely on what the county ordinances were and when TriStar came in and entered into an agreement with Miss Johnson it was under the assumption that the County would follow its rules about moving towers around and obviously that was the merits of the case that

County heard and that you have made a decision on. The problem is our right to rely on being able to have that space to provide coverage in the future, and to provide cell phone coverage in the future is harmed by allowing them to take that tower down and move it contrary to what the applicable county ordinances were.

THE COURT: So let's say 30 years from now, let's say they do the renewals, thirty years from now that tower is still in working order.

MS. MacDONALD: Yes, sir.

THE COURT: Miss Johnson says, "That's it, I'm not leasing this property to anybody for any purpose anymore," so nobody in that area gets any phone service?

MS. MacDONALD: No, sir. If that tower disappears --

THE COURT: I'm not saying it disappears. If she says, "I'm not going to renew the lease, I want to get somebody else in here, I want American Tower out, I want to turn this into a recreational park," but it is still an operating, working tower, then how do you build another competing tower if under your argument this one, you can't tear it down as long as that one is funtionable?

MS. MacDONALD: Your Honor, number one, currently under our land agreement with Miss Johnson we have a perpetual easement and so the tower, we have the right to keep the cell phone tower there.

THE COURT: To infinity?

MS. MacDONALD: To infinity. So, there is a perpetual easement on that property. And I think the crux of the matter is in terms of this issue becoming moot if they are allowed to move it, looking at the realistic situation, Your Honor, if this tower is taken down and it is moved prior to our appeal being determined that tower is never coming back to us, so if we win on the appeal that tower won't get moved, that tower won't get back, we have lost that opportunity there, we have lost the, in essence it's a hollow victory for the appeals court to say, "Yes, you're right, the County did not follow its rules, did not follow the law as it was supposed to do, as it is written, sorry, you paid a hundred thousand dollars for that easement but too bad."

Yes, you may can move it back but the problem is there is no control over making that tower get moved back. If that tower is moved now the

carriers have to move, these carriers will be on a new tower, those carriers will have right of enjoyment on that new tower. They are not parties to this action, there is no way to make those towers, those carriers move back. So, Your Honor, keeping the status quo would prevent our appeal from becoming moot.

They make the argument that they can put a tower up and take it down in 15 to 45 days. Their argument for part of their damages on moving the tower or not being able to move the tower immediately is that they have good will with these carriers and they promised these carriers, et cetera. Now, there is no affidavits or anything from any of the carriers, so we don't have anything other than hearsay as to what the carriers think but if you extend out that argument, Your Honor, they are saying, "We can just move it back whenever we want to."

I would venture to say that the carriers would get pretty aggravated for having to move twice and what we're asking, Your Honor, is to keep our rights alive in the appeal, that this is exactly what Rule 241 is designed to allow.

If you look at what the damages, the delay

damages are, and we are happy to say, you know, what is a reasonable amount for us to pay, for us to post bond in order to make sure they are not damaged if they win on the appeal. Your Honor, right now the only damages for them that we can ascertain really are two, one of which is they have to keep the lease option and that is some cost to them. Right now as far as we can tell we don't have all the agreements with American Tower and Miss Huggins, but they have the right, it looks like they have the right to re-up their option until 2014. We don't know what that cost is, I assume it is a thousand dollars but we did get that information from them.

If it goes beyond that then there may be costs of having at least for a five year, having to enter into a five year lease with Miss Huggins in some amount of money and we don't know what that amount of money is but we also know that even if you set a bond at this point they are free to come back if the circumstances change and if they do have to re-up with Miss Huggins and ask for additional, additional bond, Your Honor.

THE COURT: Excuse me, but wouldn't their damages also be the monies they are paying now

under the current lease that they would not be paying if we did not, or at least it expires in 2015 --

MS. MacDONALD: They are going to be paying a lease regardless of the outcome, Your Honor. I was doing the difference between --

THE COURT: Okay.

MS. MacDONALD: They are either going to be paying Miss Johnson money or paying Miss Huggins. The difference is in this scenario they are going to have to pay both of them for the time being, so the difference between what they would normally be paying one of them and what they have to pay to keep both of them, so that would be the, I think the proper measure of that delay damage.

The additional, they make an argument in their brief that they ordered, prior to our appeal they ordered steel to build the tower and so they have got to store that steel somewhere. Number one, my understanding, these cell phone towers, the steel structures are pretty fungible and given the number of cell phone towers they say they take and put down all over the country, that steel could probably be used somewhere else. But even so, that is not a delay damage, that could be used somewhere

else, but if they do have to store the steel, and we don't have any numbers in their affidavit as to what that might cost, that also, I think, is a legitimate concern for the Court, that would be a delay damage as well.

In terms of the Supersedeas, the argument they used to some extent sort of echos the TRO argument and there is a clear difference between damages under what a TRO bond might require versus what the Court requires for a Supersedeas. In this case, you know, it is not a question of whether, likelihood of defense on the merits, it is not required actually that a bond even be posted for Supersedeas. Unlike in a TRO where a bond is required and the Court has to determine a bond amount, in a Supersedeas it is permissive for the Court.

I think part of that reason is to be sure the Court really looks at what are the true damages of delay and in this case the Court has to look at does moving that tower moot our appeal and, Your Honor, quite frankly there is no way that tower comes back if we win, if it gets moved and we win, because American Tower nor the County have control over those carriers, have control over that

situation.

Ordinances may changes, all kind of things can interfere with that but ultimately they can't make those carriers come back and they can't make the argument that they lost good will with carriers by not letting them move now and then turn around and make the same argument that, "Well, but if we lost the appeal we can just make them move back." That don't work, Your Honor, and so we would ask the Court to consider 241 is directly on point for this type situation in seeking injunctive relief and that the true measure of what the bond should be is what it's going to cost them to continue to operate exactly how they have operated for the last fifteen years and up until they found out we had bought the property, how they were planning to operate on that tower for the next fifteen years.

I would remind the Court that we have already posted a $5,000 bond. In their brief they indicate that they would be willing to post a bond the opposite way, that if the judge, if you allow them to go ahead and move the tower they would be willing to post a $25,000 bond and frankly, Your Honor, we would be happy to agree that we'll just post, I mean, if they think that is a correct, we

figure their lease damages may amount to a couple thousand dollars, their storage costs if they actually really have any because frankly I think they could probably use that steel they bought somewhere else, but if they have any I can't imagine that is going to be more than that.

THE COURT: How much are they paying under the current lease?

MS. MacDONALD: Your Honor, about $750 a month.

THE COURT: They are paying Miss Johnson $750?

MS. MacDONALD: A month.

THE COURT: Okay.

MS. MacDONALD: And we don't know what, other than we know they paid Miss Huggins an option, we don't know what the agreement is for them in terms of what they would pay her if they have to actually exercise the option.

THE COURT: Okay. Now, I understand that TriStar Investors and American Tower, they are competitors, correct?

MS. MacDONALD: Yes, sir.

THE COURT: All right. So is TriStar Investors, are they using this tower or are they

just acting as landlord?

MS. MacDONALD: They are acting as landlord right now.

THE COURT: So when you say right now, during the pendency of this appeal are they going to do anything with regard to this tower other than collect lease payments?

MS. MacDONALD: No, sir. And, Your Honor, because I do think this part of the merits probably needs to be gone into, originally, because there is an underlying lawsuit about the lease contract between these parties as well, originally when TriStar, TriStar came in, and Minerva, they were not aware of the extension of the lease to 2030.

THE COURT: Forgive me for interrupting, I'm assuming Minerva is just the realty --

MS. MacDONALD: Yes.

THE COURT: Go ahead.

MS. MacDONALD: So, at the time the first litigation entered we really weren't certain about what that was all about. Miss Johnson is a very sweet old lady but not particularly, I'm not even sure she realized she did extend that lease, so frankly we wouldn't even be here today if they filed the lease, they wouldn't have been able to

have access to that property until 2030.

That is getting into the merits, Your Honor, but as part of that, and we are happy to waive any question about the fact that they, they can have the property in 2030 even though --

THE COURT: Excuse me for interrupting. Are you saying that TriStar's exclusive purpose during the pendency of American Tower's lease with Miss Johnson is that they are acting as landlord, they are not going to service any customers, they are not going to provide any services, they are just, they have an easement and collect rents and that's it?

MS. MacDONALD: And that's it.

THE COURT: Okay. All right, go ahead.

MS. MacDONALD: I know you have a good grasp of it in a lot of ways, I don't want to over extend, but essentially, you know, looking at the mootness issue, then it really does, I mean, it will just evicerate our appeal if they are allowed to move the tower. I think it is an appropriate matter for the issuance of a Supersedeas, Your Honor, and we can only provide certain, we just don't know the actual damage amount for them other than knowing that they will have to pay two rents

for a certain period of time and may have to pay storage and so, Your Honor, we would be more than happy to agree to a $25,000 bond that they talk about in the matter.

THE COURT: All right.

MS. MacDONALD: Thank you.

THE COURT: Which one wants to go first?

MS. BRITTAIN: Your Honor, I will take a stab. I'm going to be brief but on behalf of Horry County I would like to address just a couple points. As a preliminary matter we feel like there are three fatal flaws to the motion and I'm going to in particular address the third one but first of all the contention that the subject matter is rendered moot, we feel like it is not, that there is no harm to the defendant is in error and the contention of lack of evidentiary support which is kind of the theme of their motion is clearly not supported in the record.

On behalf of Horry County we would submit the County performed a very diligent review of the application to relocate this tower, they had a public hearing, one of the major carriers had a representative present during that hearing, there was no opposition voiced by the carrier nor has

there been some eight months later today any evidence that any carrier has any opposition to the tower being moved, and the contracts, as I understand, with the carriers are with the defendant here, not with the plaintiff.

We would also submit that given the evidentiary standard or the standard of review in this matter that the plaintiff has not even come close to presenting legitimate grounds for appeal and we feel like the County has a very strong position on appeal, that officials have acted diligently and properly and it would be a miscarriage of justice to stay this matter any further. In the due course of the proceedings the County has issued a construction permit after request and application of American Tower. We feel like that was appropriate.

As to the contention that the plaintiff relies on the ordinance, everything the County did was in compliance with its ordinance. It is allowed to grant a relocation, it followed all the steps, there have been no errors pointed out in the record as to anything that the County has done wrong in this regard. There is simply no right to rely on necessity, they have no notice to the

County. In fact the application that the plaintiff submitted related to the tower did not come in until I think over a month later, in November, well after the Council had acted on American Tower's application and granted permission for relocation.

We would request that the Court deny the motion for Supersedeas and we join in the position of American Tower.

THE COURT: All right. I agree with everything you say, Miss Brittain, but for the sake of argument let's say the appellate court disagrees with you and me and says, "No, the County shouldn't have allowed them to move the tower and Judge Culbertson got it wrong," and that happens two and a half years from now and I haven't granted a Supersedeas. What happens then?

MS. BRITTAIN: Well, Your Honor, it is my understanding, I believe Mr. Brittain is going to address this further, that the subject matter is not rendered moot, that these towers in effect are like these you used to call erector sets, they can go up and come down, and American Tower is willing to assume the risk. There is always a remedy of damages if American Tower has wrongly taken it down and they are both prepared to address that topic in

their argument.

THE COURT: Okay, you're representing the County?

MS. BRITTAIN: I represent the County.

THE COURT: All right.

MS. BRITTAIN: We have been assured by them that they are able to handle this should they be reversed, they can take their new tower down and put the old one up.

THE COURT: Is there any damage to the County one way or the other?

MS. BRITTAIN: I would say there is no -- the main damage is that we have the County Council acting in what it thinks is the best interest of its citizens and the staff performing their job and it is more of a matter of the interest of citizens as legislatively determined by the County Council.

THE COURT: But there is no monetary damage to the County one way or the other?

MS. BRITTAIN: That's correct.

THE COURT: All right, thank you, ma'am.

MS. BRITTAIN: Thank you.

THE COURT: All right, Mr. Brittain?

MR. BRITTAIN: Yes, Your Honor. I would like to go back to the merits just for this purpose, I

think to sort of get us thinking in a little different direction which I think is appropriate.

I don't know how many Supersedeas motionss the Court has been involved in. They don't come up a lot for me. I have been practicing 35 years and they are a real different breed. We're talking about things in my opinion that really don't fall into what the Court is doing now. This isn't, as Miss MacDonald pointed out, this is not a temporary restraining order. This is an unusual act by a court of general jurisdiction. Our system has to work and when our legislative groups make decisions that aren't arbitrary or capricious, that affect business activity, our system allows that to go forward as long as there is any chance for the aggrieved party to recap damages.

Well, that is exactly what the situation is here. Miss MacDonald says she ventures to say or she finds it hard to understand that a tower could be reconstructed here. There is nothing simpler than that. It happens all the time all over the place.

If the Court of Appeals or Supreme Court were to decide Horry County Council improperly abused their discretion that amounts to fraud, whatever

the standard is, and so did the Court, what would they get? What would they get? The only thing they have ever claimed is it should have been processed as a waiver. They can't stop the will of the Council. There is no chance they are ever going to stop what the Council has done.

The only thing the Supreme Court could say is, you know, "Technically speaking you should have looked a little more to the waiver provision. I know why you didn't because you ended up with one tower, so it doesn't make any sense to have a waiver for the fact that two towers are going to be together but we're going to make you go back and look at this strictly as a waiver."

So, what is County Council, how would that change anything? They go back and say, "We granted this like we did beforehand because there is only one tower when it is over with." As you pointed out in our first hearing, this is not a situation where there is any likelihood to speak of that it would change but here we're not even looking at that. We're looking at mootness, not damages. Is it going to be moot? No.

If the Supreme Court says, "You took the tower down and you constructed one on Miss Huggins'

property, that is what the judge and County Council said you can do, we're going to override that, you know, we understand, American Tower, that you had a lease that said that tower was yours, neither TriStar, Minerva, Horry County Council or Miss Johnson had one right to that tower." It is clearly in the lease, there is no question about it being there. They can go take that tower down today if they want to, nothing could stop it, it is clear, nobody even challenges that.

So, where you stand here today is TriStar, Minerva and Miss Johnson don't have any legal rights that aren't being protected by what American Tower agrees to do, and I represent this to the Court, as we said in our brief and would accept it as part of an order, should they lose in the end, should there be a requirement that the tower be put on that property they would do so. Should there be a requirement that they take the new tower down they will do so. They are prepared to pay Miss Johnson who is, I don't know what their arrangement is, they are prepared to pay her through the term of the lease.

Let me point one thing out to you. They filed a lawsuit that started everything, saying

this lease terminated in 2015 and that has been their position from day one so American Tower, based on that assertion, goes to the Council through the proper chain to relocate a tower so they can operate.

Now in this last week, for purposes of this argument, they come in and tell you no, no, you know what, we're going to, let's assume it does go on to 2030, what is going on there? Does it make you want to look somewhere else to see if anything is going on?

Well, we have asked you to consider the Texas litigation in this matter, the elephant in the room, where as part of the pleadings TriStar and Minerva have contacted over 600 clients of American Tower and told those landlords they can't relocate towers, "They are not going to relocate the tower and that if they claim that they are lying to you." That lawsuit is pending in Texas and so what is going on here isn't about these damages, if they win this somehow some way, what needs to be done can be done. What makes this moot?

I will tell you where moot is, the cases they cited, that's where somebody takes a child based on an order from the jurisdiction of South Carolina

and puts them in Texas. Now we've got a problem because jurisdiction follows that child. So when you appeal it to the South Carolina Supreme Court, Court of Appeals, they don't have jurisdiction. That is what this is for, mootness. They fought it out, they fought it out over in the southwest over water is going to be gone, be consumed by the time the appeal gets there and there is no way to replace it with money damages. It is an exhaustable chattel, you have mootness. We don't have anything like that. Monetary damages in this case could award anybody, specific performance in this case could award anybody.

Judge, the premise here is clear. We cited one of the recent cases that I think show what the general policy of the State is in these matters, which is to allow business to go forward, and it is the South Carolina Department of Revenue case which is a 2012 case in our brief, where essentially the administrative judge entered what was a Supersedeas, they stopped the business pending an appeal and the Court of Appeals reversed that decision and the Court of Appeals can review what you do here today, this isn't the end of the matter, but what would happen here today would be

upsetting the normal course of business, what our Legislature set forth, what our Supreme Court rules set forth, what our appellate rules set forth. This is supposed to move forward as part of the business approach.

Now, we can't just assume or venture to say that the tower is not coming back. I'm representing to the Court on behalf of my client that should that ever become part and parcel of the final decision in this case it will be done and there is nothing to prevent it. We're also prepared to pay Miss Johnson through the term of the appeal, not make an argument about what she did with TriStar changed any obligations of my client to make that payment, and they will also pay Miss Huggins. Their feeling is maybe Miss Johnson was told some things that have not turned out that way, we don't want her to suffer, we're aleviating that issue for the Court. So, there is really no place in the claims or the circumstances here where it's moot.

Now, what is easy to happen in a hearing like this, I'm much more accustomed to arguing irreparable harm or damages or bond for damages. We don't have a jurisdiction issue. They cite

three cases, they are Family Court cases, have nothing to do with this case, we don't have a jurisdiction issue, we've got mootness, so you're going to have to find, my opinion, in order to grant their motion is to say, "You know what, it's impossible for this appeal to go forward with any efficacy because if they build this tower one can never be reconstructed, one can never be put back on the property and if it isn't put back on it could never be monetarily determined what cost that was," which we know that is not true. We can figure up what it cost. They are going to be paid what they're entitled to for their lease.

Now, we talk about maintaining the status quo. What is the status quo? Well, I'm going to put into evidence today, we got it yesterday, I want to substitute a copy, I would like to mark it, a building permit for us to build the tower.

THE COURT: All right. Any objection?

MS. MacDONALD: I would like to mark the original. I'm not going to object to it, Your Honor.

MR. BRITTAIN: I would like to mark the original and substitute a copy.

THE COURT: American Tower's Exhibit 1?

MR. BRITTAIN: Yes, sir.

THE COURT: Let Miss MacDonald take a look at it.

MR. BRITTAIN: I certainly will.

(Permit marked and received in evidence as Defendants' Exhibit Number 1).

MR. BRITTAIN: Give me one second, Your Honor.

Your Honor, just to make one point clear that I may have confused for a second, what I'm trying to get across to the Court as far as the narrow issue I think we have today, which is mootness, is that our Supreme Court is powerful enough in this case, or the Court of Appeals, to order remedies. American Tower feels strongly that an uncontested lease provision gives them the right to do anything they want to with the tower that is currently on Miss Johnson's property. Section 8 of the lease certainly says that.

So, obviously we expect that to be the holding in all the cases pending not actually before the Court at this time, we don't expect to ever be, like Miss MacDonald said, we don't expect to ever be required to relocate or reconstruct that tower there but the point I'm making is for

purposes of our argument here it is not impossible, which moot means, to render moot means meaningless, makes no difference, it's a waste of time, but we all understand that our Supreme Court could say, "We are going to require the following and if the following is not done then there will be monetary damages associated with it." I didn't mean to imply that we planned on that happening because we feel very strongly --

THE COURT: I understand.

MR. BRITTAIN: I want to make sure my people, I would ask the Court to review the briefs prior to ruling, I'm like Susan, I don't want to take up a lot of the Court's time because I do think --

THE COURT: I guess what I'm looking for from you, like I say, like I said with Miss Brittain, I basically agree with everything you are saying.

MR. BRITTAIN: Okay.

THE COURT: However, let's just say the appellate courts say you, Miss Brittain and I am wrong. What is the damage to your client?

MR. BRITTAIN: Well, we in the time since we got your email tried to address that. I have several other exhibits which have been part and parcel of the case so far so maybe they can come in

but one of them of course is an intangible damage. Unfortunately the way this system works and business works, my client, and I think you very carefully and properly pointed out that TriStar, Minerva, all they are trying to do is get in there and take advantage of the lease, they're not going to operate any business, they don't have a connection there. We have a business relationship with these carriers. They have to get the right to build the tower themselves to do something like that, which they don't have a right, they have applied but they don't have it.

So, we have explained to them what's going on and this is in some of the affidavits of Mr. McNeil and Mr. Goforth, but we explained what is going on, it is a little bit of a wrinkle but because of what has happened with County Council and the Court's order everything is moving in that direction, $225,000 worth of steel has been purchased, Miss MacDonald can't tell you whether that can be used somewhere else or not, she ventures to say, but the relationship with the carriers is compromised when we have to go back to them now and say, "Well, we really haven't, you know, we can't do what the Council said or what the original court order said,

we have to leave it like it is."

THE COURT: Excuse me, let me back up. When you say go back to the carriers, what you're trying to do in this case, is that motivated by the carriers or is it to get away from a competitor that now has the lease? I mean, that is my question. If you're servicing the carriers under the present tower why are you moving? As I understand, this is a tower that is working, it's servicing your carriers, why are you moving?

MR. BRITTAIN: It goes right back to the big part of what you have asked to start with, so let's put this into context of everything that's happening and let's talk about how it started and what that prompted as far as American Tower, LLC, was concerned. They felt like they had a long term relationship with Miss Johnson who like Miss Huggins who is here with us today is a long time resident of Horry County, has got some property that has got a tower on it. Enter the picture TriStar, Minerva, and they go and make a deal with Miss Johnson to get a, I think they said it was perpetual, easement instead of, this is where the greed comes in, instead of whatever that would work out for the 2030 lease, "No, no, there isn't an

extension, we had a property right here and so we didn't have notice of it," so in court they say there is no lease beyond 2015.

THE COURT: So how does this extension work under the lease? 2015 do both parties have to agree to it or does your client have the automatic right to extend it?

MR. BRITTAIN: Let me check, I have to ask about that.

It is up to us.

THE COURT: So, TriStar can't stop you from renewing the lease under certain terms or conditions if you want wanted to renew it?

MR. BRITTAIN: Unless they claim as they have that the amendment to extend it to 2030 was ineffective because of lack of notice, which they did, that is all pending in the lawsuits, I have copies of lawsuits for you.

Now, it is only this week that they came in and changed, so here is what, here is the position that put American Tower in. What are they going to do with a short arrangement out there, "Hey, we only got three years here," and it's in these affidavits, "that is not enough time to get everything done like you're supposed to do to make

sure you're going to maintain the service here."

So, based on that assertion they begin the proper process with the council and the staff to lay everything out and look for a location, and one thing that is being lost here is this location is different and better than the Johnson location. That location is too close to the road and under the current requirements and regulations of the County it will be a problem. On the Huggins property it is much farther off the road with a broader clearing and will make better service for the people of Horry County. That is in this record.

So, that has taken place in the normal course of events and so to go back to the Court, the damages will be, what is to keep them from, as soon as you issue this decision, to go back and claim again it is 2015. I can't respond to what has been a pending lawsuit for months and walk in this courtroom today and have Miss MacDonald say because it may suit one part of the argument today, "Well, we're going to concede all that now and go back and say 2030." We have done all this work.

THE COURT: What has TriStar's argument been they could terminate the lease in 2015?

MR. BRITTAIN: That that was, that the amendment, which was essentially an extension but for a longer period of time, took place without their knowledge and they had a property right and an easement in that property and therefore to amend it was invalid. And to be honest about it, American Tower, LLC, accepted that as true. They were fighting over it in the court but they have gone, their actions showed they have had to take actions to preserve the service without being held up, so to speak, on an extension of the lease.

And I want to answer all your questions but I think we're in an area here where the system will work. I ask you when this is all said and done and you go back and review it, to continue to return, since there is no jurisdiction issue here, return to what moot means. They have no legal right today that is not being protected by paying the lease payments until 2015, none. There is no other right they have. They don't have a permit, a building permit, they don't have any authority to build a tower, there is nothing that gives them the right to make us keep our tower up, we own it.

THE COURT: So, at the end of the lease you can take it down?

MR. BRITTAIN: Yes, sir, take it down today if we wanted to. They can't make us keep the tower up there, not even the County can do that. We can take the tower down, we would have to get a deconstruction permit. I'm not saying that it would happen but there is no legal, in the normal course of events that is something that can be done and what they are trying to to is kind of skip over that part and create some kind of long term right regarding our application for the tower. They don't have a successful application for any kind of tower so what would be happening here is delay, which has been what has been happening from the start.

I wasn't involved in the case but, I mean, we're talking about a three month delay in the proposed order, as I understand it, and that is where the system doesn't work if you can come in and not strictly meet the standard you're required to meet, which in this case is mootness. I don't know how often you deal with that concept as a Circuit Common Pleas judge. It is something that doesn't just constantly come across my desk, so to go back and look at what it really means, it is a rare set of circumstances in our world because most

lawyers are creative enough and our system is old enough that there are ways to get damages when things end up occurring and this is that kind of situation. The temptation is to argue all the merits with you again, which there is no reason to, the decision has been made there, but I brought it up in the beginning to realize what it is, to show you how little legal right they have to protect. It is to show you what they could get if they prevail and it is not that they get a tower and it is not to keep American Tower, LLC, from moving their tower. It would be, like you could have done, you could have said, "You know what, technically speaking, I'm going to return this to Horry County, Miss Carter, I want you all to consider this under the waiver provision." But, Judge, why should we do that when this is completed as one.

And they mentioned waiver in their discussion of it, as becoming unnecessary because of the fact it is only going to be one tower when it is over with, it is a matter of semantics, as she would say. That is all they could get from relief so that would leave the parties where they are. They can't get a right, a legal right based on County

Council action so what you would be doing here, in our opinion, is delaying a legitimate business purpose activity that benefits the county, has been fairly won by American Tower throughout the process. Generally speaking, under our rules it is supposed to take effect and under rare circumstances when it would be rendered moot, no possibility of replacing towers, no possibility of establishing damages based on it, you would enter a Supersedeas. We don't have that, in my opinion.

I have not addressed some issues in the brief and let me go over the exhibits and see if there is a problem with those.

THE COURT: All right.

MS. BRITTAIN: Your Honor, may I --

THE COURT: Let me finish up first.

MR. BRITTAIN: I have a copy of these for Miss MacDonald, but Exhibit A that I would put in is an affidavit of Robert McNeil.

THE COURT: What does it say?

MR. BRITTAIN: It deals with the issue concerning the carriers, his conversations with the carriers, et cetera.

THE COURT: All right.

MS. MacDONALD: Were they attached to your

previous --

MR. BRITTAIN: There is two that weren't, E and F. When I get to them I will hand it up.

MR. BRITTAIN: E is likened to A.

C is copies of the underlying litigation that we have been talking about here concerning claims about the current lease and in your email you said be prepared to talk about the current lease and issues concerning that so I included that.

THE COURT: So, this is a separate lawsuit?

MR. BRITTAIN: Yes, sir.

THE COURT: All right.

MR. BRITTAIN: And D is Miss MacDonald's answer, so you have both.

And I don't know, did you get E and F? I can't tell whether we included E and F but E is a copy of the litigation that is taking place in Texas. I'm not saying that you need to read all this but it supports the statement that we made in our brief about what is going on between these two and the significant litigation out in Texas.

And then F was an order that just for purposes of the record is your order on the merits.

Judge, let me finish simply by saying that when you, if you are going to start trying to

figure out where the various equities are, there are no damages to TriStar, none. They made a deal with Miss Johnson, that deal stands, and if Miss Johnson gives them the money that's fine with us, we're going to pay her, she's got a different deal and those people are trying to change everything and hurt American Tower but we're not going, that is not going to enter into this, they are going to pay her out through 2015, which is what they claim in their lawsuit the lease is for. That means she can pay TriStar.

They have no theory pending before you or any court where they can keep a tower. That is not a legal possibility so when you flip it around and start talking about what kind of damages they face, they don't face any. They are going to be paid what they could possibly lose.

I'm telling you the issue here is the tower, neither Miss Johnson nor TriStar, Minerva, they have no right whatsoever to that tower. They may try to get it somewhere else in some sort of lawsuit or something but that is not here today. Here today before you is they don't have any rights in that tower, none, and therefore they don't have any damages other than ones that are going to be

paid if you let us build a tower.

So, based on that, let me double check, I think I'm through.

Okay, that is all we have. Thank you very much.

THE COURT: All right, Miss MacDonald.

MS. BRITTAIN: One brief comment to add.

THE COURT: Yes.

MS. BRITTAIN: The County does have a strong interest in continuation of service because of implication, not just for normal service but also for police, fire and emergency 911 service, so that is an important interest.

THE COURT: All right, thank you, ma'am.

Rebuttal?

MS. MacDONALD: Your Honor, I did have just a couple things. Number one, and I agree with Mr. Brittain that the issue is a mootness issue in this case and our Supreme Court or our Court of Appeals is not going to say to these parties, "If this tower is taken down and a new tower built you've got to move it back." That is not going to be in the purview of their jurisdiction or even what is in the purview of this order and what they will hear. Number one.

Number two, they can't make the carriers move and if the carriers that are not parties to this action, they can't move them. That is the mootness, Your Honor. But the issue here is, is essentially one, the rule of law. TriStar came in to this property, looked at it and said, "We're going to have the beneficial easement here because eventually we will probably have a right to put our own tower here."

THE COURT: Well, I mean, that is going to be my question, I apologize for cutting you off, but if TriStar, if their position is all they are is a leaseholder collecting rent, they are still bound by the terms of that esement.

MS. MacDONALD: Correct.

THE COURT: They are still going to be getting their lease payment. What difference does it make if the tower is moved?

MS. MacDONALD: They wouldn't get lease payments if they move the tower, Your Honor.

THE COURT: If they have got a lease that mandates they receive lease payments.

MS. MacDONALD: They only receive it while the tower is sitting on --

THE COURT: That is part of their lease with

her, it says they only get lease payments as long as the tower is on the property?

MS. MacDONALD: And in operation.

MR. BRITTAIN: That's not correct, Your Honor. We make the lease an issue under that. It is going to be paid.

MS. MacDONALD: You're right, Your Honor, I thought that but I was wrong. The issue is when TriStar comes in and spends a hundred thousand dollars to buy this beneficial easement, part of their reliance is looking at county ordinances and determining that they are going to be able to get a tower there down the road.

THE COURT: Okay. That is the whole crux, they want a tower in this spot down the road because they are a competitor here.

MS. MacDONALD: Correct but, Your Honor, part of that is rule of law and that is what our appeal is about, is rule of law about we had a right to rely on the county ordinances and our interpretation of them, we were going to be able to relocate a tower there and they would be able to move it because, I really don't want to get back into the merits but if you recall there was not just this tower, there is another tower within two

and a half mile radius.

THE COURT: I mean, is Mr. Brittain right, this is a national thing where TriStar is coming in buying up leases where they have put up towers, the hopes being at the expiration of those leases they will then assume the use of those towers?

MS. MacDONALD: They have done that in some cases but in some cases we put up our own towers and there is, believe me, Your Honor, it is a quagmire with these two parties on a national and federal lawsuit and that federal lawsuit I think goes to trial in October, sometime in October, but nonetheless, Your Honor, the whole issue of the mootness is if that tower disappears from that property it's not coming back and our rights to rely on the ordinances as written, that is what we're appealing, and if the Court of Appeals says you're right, they didn't follow their ordinances and they shouldn't have allowed them to move we're out of luck because we can't get that tower back.

THE COURT: Well, but address Mr. Brittain's argument that they can take down the tower today if they wanted to if they got a permit to deconstruct it and take it down.

MS. MacDONALD: They can't do that because

they have to provide service somewhere in that vicinity, Your Honor.

THE COURT: But they own the tower, expiration of the lease --

MS. MacDONALD: They could, but there would be a way to get a new tower built, Your Honor, I mean, and they argue about the continuity of service and frankly it makes no sense for continuity of service for the county for that tower not to stay right where it is, it is business as usual pending the appeal.

THE COURT: Well, it is also business as usual for your client if the tower is moved because they are still going to collect, they are still going to get exactly what they are entitled to during the pendency of this appeal.

MS. MacDONALD: Correct, Your Honor, but if they are allowed to move the tower we will not get what we anticipated we would get in the future and that is gone, there is not a damages, there is not a specific formula, it just can't occur, Your Honor, and so for that reason I think this is particularly appropriate for the mootness concern.

Your Honor, Mr. Brittain made the argument that, you know, when the appeals and the normal way

things work, well, normally what does happen is the judgment is stayed pending appeal. The only reason we're here today is we sought injunctive relief.

THE COURT: But did your client initially take the position that this lease terminated in 2015 because they did not have notice of the --

MS. MacDONALD: Yes, sir, they did and, Your Honor, we still do because we could still take that position but we'll waive it, we waive it, and the underlying litigation, discovery is ongoing and it is sort of in flux but that is accurate. I do find it telling, Your Honor, that we still have not been able to hear what exactly monetarily a delay damage would be for them and so --

THE COURT: Well, as I understand, there is no damage to your client, it is just an anticipated future investment that they are not going to realize.

MS. MacDONALD: Not in terms of the appeal, Your Honor. And that is, our damage isn't monetary, that isn't why it is so important for us.

THE COURT: They are wanting to protect their investment.

MS. MacDONALD: Right, we want to protect our investment, which will not be protected but the

delay damages and the issue of what you should consider in terms of the bond if you find it is moot, the issue is what are their, our damages are not the issue, their damages are the issue except to the extent our damages create, there is a mootness situation for us, you know, the issue of damages is simply a delay damage for them which they really did not argue.

THE COURT: But would you not agree or let me hear why you do not agree that if we're to maintain the status quo, the status quo for the parties, for your client, is that they keep collecting their rental agreement?

MS. MacDONALD: Correct.

THE COURT: They keep collecting their rent.

MS. MacDONALD: Yes.

THE COURT: During the pendency of this appeal it is not going to cost your client one dime, they are not going to be out of pocket any money, they are still going to still realize their lease payment.

MS. MacDONALD: Yes. We don't have, we don't have a money damage, I don't think, during the pendency of the appeal but our damages during the pendency of the appeal is not the issue. Our issue

is what are our damages if we win the appeal and it has not been stayed, and so that is the whole issue.

THE COURT: Well, I mean, if you win the appeal we've got this other lawsuit. How does your client not have an adequate remedy at law? Why can't they get a money judgment for them wrongfully moving the tower if that's the case?

MS. MacDONALD: The problem is, Your Honor, the issue for us is whether or not we were guaranteed certain rights under the rule of law. I mean, that is what our appeal --

THE COURT: When you say guarantee, you're talking about their interpretation of the ordinance, you're not saying there is any judicial decision or any assurance from County Council that says this tower will not be moved or is it just TriStar's reading the ordinances and saying this tower, it is just their interpretation?

MS. MacDONALD: I think it is part and parcel of both, Your Honor. It is our interpretation that we invested in this property, we have what we thought were going to be perpetual rights and the ability to have our own tower eventually and so part of that investment and part of that plan was

based on the fact that we would be able to do that, which is now being taken away by the county not following the ordinances the way that we thought they had to follow them. Mr. Brittain makes the argument about waiver but we haven't even been allowed to present that argument to --

THE COURT: But they never made that investment based upon any assurance from county council or any other court's decision that says this tower can't be moved.

MS. MacDONALD: No, but they made it based on what the county ordinances say and so --

THE COURT: Dual towers, not for replacement.

MS. MacDONALD: And for replacement towers as well. I mean, the issue is, I mean, the status quo, the status quo would operate to protect both parties at this point, Your Honor, and so I think that in terms of the mootness we do think that, you know, once the tower is moved it is gone for us and it can't be taken care of or replaced, but there is really no damage for either side if the status quo is maintained for a year and a half to two years and, Your Honor, I think our argument, status quo is part of that issue that needs to be decided, and being able to operate as usual, as they have

operated for the last fifteen years and as they anticipate they would operate for the next fifteen years.

THE COURT: But, I mean, they are going to continue to operate that way.

MS. MacDONALD: Yes, with Miss Johnson.

THE COURT: But your clients are going to continue to operate the same way they have for the last fifteen years and throughout the remainder of this lease.

MS. MacDONALD: Yes, but if they are allowed to move the tower that goes away.

THE COURT: No, they will still collect their rents.

MS. MacDONALD: Well, only, we anticipate at the end of the fifteen years, so her rights would end.

THE COURT: You are saying, let me ask, at the end of this lease you are saying that your clients acquire ownership of this tower?

MS. MacDONALD: No, sir.

THE COURT: And --

MS. MacDONALD: No, sir, Your Honor, but we say that under the ordinances we would have been able to build our own tower and we may be --

THE COURT: But that is not a guarantee, regardless of whether this tower is there or another tower is there or another company comes in, there is no guarantee that TriStar at the end of this lease will be able to build a tower, is there?

MS. MacDONALD: Not at this point, Your Honor.

THE COURT: Okay.

MS. MacDONALD: But our interpretation of the ordinances were we would have been able to but obviously we would have had to file for a permit.

THE COURT: And anybody could come in and file for that permit and then County Council would decide who gets to build the tower and where they get to build it.

MS. MacDONALD: Correct, Your Honor, except for the fact that there is another tower within that space, that creates an issue.

THE COURT: Okay, I think I have hold of it now. All right, I will take it under advisement. Thank you very much.

MR. BRITTAIN: Thank you.

MS. BRITTAIN: Thank you.

THE COURT: Thank you.

(Hearing Concluded).

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
TRISTAR INVESTORS, INC., MINERVA REALTY, LLC, and ANGELINE JOHNSON,	)	Civil Action No. 2012-CP-26-8652
Plaintiffs,	)	**BRIEF IN SUPPORT OF PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**
vs.	)	
THE HORRY COUNTY COUNCIL; and AMERICAN TOWER CORPORATION,	)	
Defendants.	)	

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CLERK OF COURT

TriStar Investors, Inc. ("***TriStar***"), Minerva Realty, LLC, a wholly owned subsidiary of TriStar, and Ms. Angeline Johnson submit this Brief in Support of Plaintiffs' Application for Temporary Restraining Order and Preliminary Injunction and would respectfully show as follows:

I.
OVERVIEW

1. Plaintiffs timely filed an appeal from a decision of the Horry County Council (the "***Council***") and an application for a temporary restraining order and a preliminary injunction that would prevent irreparable injury pending final resolution of this matter.

2. While Plaintiffs claims are pending in this Court, Defendant American Tower Corporation ("***American Tower***") may act on the Council's unlawful decision to approve its application by taking down the existing, fully functioning cell tower on Ms. Johnson's property and building a new tower on a different landowner's property right across the street. If the Court allows American Tower to proceed before fully adjudicating Plaintiffs' claims, this will further American Tower's anticompetitive agenda, compromise TriStar's relationships with the carrier

tenants on the tower and with landowners throughout the country, cost TriStar its carefully cultivated goodwill and reputation, and deprive Ms. Johnson of the long-term revenue share payments for the tower site on her property.

3. Plaintiffs seek a temporary restraining order and preliminary injunction pending the Court's resolution of this dispute in order to prevent Plaintiffs from being irreparably harmed by American Tower's deceitful, anticompetitive conduct that seeks to eliminate TriStar from the market and unfairly deprive Ms. Johnson of the long-term revenue share payments to which she is entitled and upon which she shall rely.

II.
SUMMARY OF FACTS

4. American Tower currently operates a cell tower on Ms. Johnson's property pursuant to a lease with a term that runs through January 13, 2015 (the "***Lease***").[1] In June of 2010, Ms. Johnson gave TriStar, a competitor of American Tower's, an easement that gives TriStar "the right to modify, extend, expand, and/or terminate" the Lease for the tower site on her property. The easement agreement between Ms. Johnson and TriStar (the "***Easement***"), which is taken subject to the Lease, would allow TriStar to operate a cell tower site on Ms. Johnson's property should TriStar decide to not extend American Tower's Lease.

5. Although American Tower is keenly aware of the assignment of the Lease to TriStar and could at the very least explore a mutually agreeable solution, American Tower has made no attempt to negotiate or secure an extension of the Lease with TriStar.

[1] American Tower purportedly obtained an extension of the Lease in 2007 which would extend the term through January 13, 2030. American Tower did not record evidence of this purported Lease extension in the property records until September 2, 2010, which was two months after TriStar recorded its easement agreement and after TriStar notified American Tower of TriStar's acquisition of its easement. TriStar is a bona fide purchaser that had no knowledge of the purported extension at the time it purchased an easement. TriStar remains unaware of the terms of the purported extension as Ms. Johnson does not have a copy of the corresponding amendment and is thus uncertain whether to recognize the purported extension.

6. American Tower sought approval from the Horry County Council for a Telecommunications Tower Permit to build a new tower across the street from its existing, fully-functional tower in order to make an example out of Ms. Johnson for doing business with TriStar and in an attempt to serve as a "lesson" to other landowners who dare to do business with TriStar. American Tower's application was presented to the Council on October 16, 2012, in the form of Resolution R-73-12 (attached to TriStar's Complaint as Exhibit A). Contrary to the applicable County ordinances and despite a complete lack of evidence mandated by the ordinances, the Council approved the Resolution, in part as the result of American Tower's misleading petition and presentation to the Council.

7. If the Lease with American Tower is not extended, TriStar is fully prepared to and intends to continue to operate the existing tower site. As the tower site operator, TriStar will provide all of the services currently provided by American Tower at substantially lower cost to the wireless companies and at greater benefit to Ms. Johnson, the property owner at the existing site. Without intervention from this Court, however, American Tower's attempts to monopolize the market and manipulate the Council will successfully eliminate TriStar from fairly competing in this area.

8. Plaintiffs respectfully request a temporary restraining order and preliminary injunction to maintain the status quo and prevent American Tower from tearing down the existing tower and taking any actions to begin construction of the new tower, pending Plaintiffs' appeal of the Council's decision to this Court and the Court's resolution of this dispute.

III.
GOVERNING LAW

9. Generally, for a preliminary injunction to be granted, the applicant must establish that: (1) it would suffer irreparable harm without the injunction; (2) it will likely succeed on the

merits of the litigation; and (3) there is no adequate remedy at law. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). The plaintiff is not required to prove an absolute legal right when seeking a preliminary injunction. Rather, the plaintiff must present a reasonable question as to the existence of such a right. *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 456, 626 S.E.2d 34, 37 (Ct. App. 2005). "Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits." *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992). The purpose of an injunction is to preserve the status quo and prevent possible irreparable injury to a party pending litigation. *Peek*, 367 S.C. at 455, 626 S.E.2d at 36-37.

IV.
ARGUMENT

A. Plaintiffs will suffer irreparable harm without an injunction from this Court

10. If the Court determines after the carriers have moved from the existing tower that the Council abused its discretion, it will be nearly impossible for the carriers to move back to the existing tower or for TriStar to undo the reputational damage that it suffers. TriStar will be irreparably harmed if American Tower is permitted to build its new tower and tear down the existing tower without the Court first determining whether these acts are in fact permitted by the Horry County Ordinances.

11. The South Carolina Supreme Court has held that a private physician's loss of privileges at a hospital during litigation between the hospital and the physician would lead to a loss of the physician's referral base which could lead to the loss of her professional practice. In holding that the complete loss of a professional practice can be an irreparable harm, the court noted "[o]ther appellate courts have upheld injunctive relief to prevent the loss of a business or

business goodwill." *Peek*, 367 S.C. at 455-56, 626 S.E.2d at 37 (citing *District of Columbia v. E. Trans–Waste of Md., Inc.*, 758 A.2d 1, 15 (D.C. 2000) ("While economic loss does not, in and of itself, constitute irreparable harm, such harm will be found if economic loss threatens the very existence of [plaintiff's] business."); *Campbell Inns, Inc. v. Banholzer, Turnure & Co.*, 148 Vt. 1, 527 A.2d 1142, 1146 (1987) ("The potential loss of a business satisfies the irreparable harm requirement for the issuance of an injunction."); *IAC, Ltd. v. Bell Helicopter Textron, Inc.*, 160 S.W.3d 191, 200 (Tex. App.—Fort Worth 2005) ("Loss of business goodwill or loss that is not easily calculated in pecuniary terms is sufficient to show irreparable injury for purposes of obtaining a temporary injunction.")). Similarly, absent injunctive relief from this Court, TriStar's business, reputation, and goodwill will be severely compromised by American Tower's actions.

12. Moreover, "[c]ourts consistently have recognized that the loss of permanent relationships with customers . . . constitutes irreparable harm . . ." *Industrial Packaging Supplies, Inc. v. Martin*, No. 6:12-713-HMH, 2012 WL 1067650, *5 (D.S.C. March 29, 2012) (internal citation omitted) (holding that plaintiff made clear showing of irreparable harm due in part to potential loss of customer relationships); *see also Standard Register Co. v. Kerrigan*, 238 S.C. 54, 119 S.E.2d 533 (1961) (reversing denial of injunction when plaintiff established threatened irreparable harm to customer relationships). In order to protect TriStar from suffering permanent harm to its relationships with carrier tenants and landowners on cell tower sites throughout the country, injunctive relief is necessary.

13. TriStar has alleged antitrust violations against American Tower due to its corporate policy of anticompetitive behavior. These claims, among others, are pending in the lawsuit styled *TriStar Investors, Inc. v. American Tower Corporation, et al.*, Case No. 3:12-cv-

499, in the United States District Court, Northern District of Texas. TriStar's allegations of antitrust violations against American Tower are based in part on American Tower's business model to deceive landowners into believing that if the landowners enter into deals with TriStar, American Tower will make an example out of them by moving the tower to a different property. If American Tower is allowed to do that here, it will be because the Council failed to properly apply the Horry County Ordinances and will have the effect of significantly advancing American Tower's anticompetitive scheme.

14. If this Court does not enjoin American Tower from building a new tower in violation of the local ordinances, American Tower will capitalize on this lone example to continue deceiving landowners throughout the country into believing that American Tower will move carriers from one tower to another if the landowners do a deal with TriStar. As a result, this single cell tower site could have a domino effect on TriStar's business all over the country. The South Carolina Supreme Court noted that a lower court found irreparable harm to a plaintiff's business was likely to occur based on a "domino effect" that might occur to other areas of the plaintiff's business if the defendant's conduct was not enjoined. *Ins. Fin. Servs., Inc. v. S.C. Ins. Co.*, 271 S.C. 289, 292, 247 S.E.2d 315, 317 (1978) (affirming lower court's increase of injunction bond). The domino effect that American Tower's actions will have on TriStar's business at other tower sites further establishes TriStar's risk of irreparable harm.

15. In March of this year, American Tower's CEO, James Taiclet, was asked during a presentation to investment analysts what would happen to American Tower's profits when American Tower's leases with property owners come up for renewal. The transcript from Mr. Taiclet's presentation is attached here as Exhibit 1. Mr. Taiclet told investment analysts that "[t]he leverage on our side is that we can move the tower nearby and go onto other leased land

because we own the customer contract." Ex. 1 at 7. When Mr. Taiclet was asked what the costs would be of moving a tower, he said "we would probably only do it as a demonstration." Ex. 1 at 8. American Tower's actions are exactly that, a malicious "demonstration," and the victim is Ms. Johnson.

16. Ms. Johnson will be irreparably harmed if American Tower is permitted to build a new tower across the street from the existing tower and to take down the tower that is currently on her property. Ms. Johnson, a retired widow, will lose out on the long-term revenue share payments that she is entitled to receive and upon which she will rely.

17. The carrier tenants are entitled to peaceful and quiet enjoyment of the tower during the term of their lease with American Tower. On information and belief, the carriers have not reported any dissatisfaction with the tower or a desire to move towers unless they are forced to because the existing tower is removed. These carrier tenants have the right to continue using the tower without interruption until the Lease expires in 2015 – the same time that the carriers' leases with American Tower expire.

18. If the existing tower is torn down, the carrier tenants will lose their right to quiet enjoyment on the tower during the term of their lease. "It is virtually universally . . . held that a lease implies a covenant of quiet enjoyment." *Diminich v. 2001 Enterprises, Inc.*, 292 S.C. 141, 144, 355 S.E.2d 275, 277 (Ct. App. 1987) (citing Friedman on Leases § 29.201 (2d ed. 1983)) (reversing trial court's ruling that covenant of quiet enjoyment was not implied in lease). As a result, the carriers will be irreparably harmed if American Tower is permitted to take down the tower on Ms. Johnson's property. *See AJG Holdings, LLC v. Dunn*, 382 S.C.43, 674 S.E.2d 505 (Ct. App. 2009) (affirming issuance of preliminary injunction and holding that activity which interferes with use and enjoyment of property is sufficient to prove irreparable harm).

B. Plaintiffs do not have an adequate remedy at law

19. If, pending review of the Council's decision by this Court, American Tower acts on the Council's October 16 ruling, Plaintiffs will not have an adequate remedy at law. If American Tower is able to construct its new tower and tear down the one on Ms. Johnson's property, the carrier tenants will be forced to relocate to the new tower. Monetary damages will be incapable of making Plaintiffs whole in order to repair the loss of business relationships and harm to goodwill that will result from American Tower's actions. The damages that Plaintiffs will suffer are not readily ascertainable or subject to valuation. As a result, injunctive relief is not only appropriate but also necessary. *See Peek*, 367 S.C. at 457, 626 S.E.2d at 38.

20. Enjoining American Tower from building a new tower and tearing down the existing tower will preserve the status quo. The Lease does not expire until 2015. American Tower may continue operating the existing tower, receiving rent payments from the carriers occupying the tower, and making the ground rent payments to which it agreed pursuant to the Lease. Before the Lease expires, the parties will have the opportunity to fully and fairly litigate their claims before this Court and the Court will issue a final ruling. Maintaining the status quo until this Court has a chance to fully adjudicate Plaintiffs' claims will prevent the landscape from irreversibly shifting in this area and in the cell tower industry as a whole.

C. Plaintiffs have established a likelihood of success on the merits

21. Plaintiffs are likely to succeed on the merits of their challenge of the Council's approval of Resolution R-73-12. The Council's ruling was arbitrary, unreasonable, and an abuse of discretion because it was not supported by substantial evidence and failed to follow the applicable ordinances. *See e.g., Sloan v. Greenville County*, 356 S.C. 531, 560, 590 S.E.2d 338,

353 (Ct. App. 2003). The facts identified herein establish a prima facie showing that TriStar and Ms. Johnson are entitled to a temporary restraining order and/or a preliminary injunction.

22. While the Council may exercise discretion in granting or denying Telecommunications Tower Permits, the Council "is not left free to make any determination whatever that appeals to its sense of justice. It must abide by and comply with the standard prescribed by the local ordinance and zoning statutes." *Hodge v. Pollock*, 223 S.C. 342, 348, 75 S.E.2d 752, 755 (1953) (overturning zoning board's grant of a variance because there was "no showing" that the conditions for granting a variance had been met).[2] In holding that a zoning board improperly granted a variance, the South Carolina Supreme Court noted, "[t]he statute authorizing variances serves a useful purpose but the requisite conditions must be met." *Id.*

23. The South Carolina Court of Appeals held that one county council's decision to go forward with a public construction project was arbitrary because it was based only on "three conclusory statements that [were] unsupported by any factual grounds related to the renovation project." *Sloan*, 356 S.C. at 560, 590 S.E.2d at 353. The court determined that this conclusory evidence did "not provide sufficient detail to allow the County Council and the public to make an intelligent review of the decision." *Id.*

24. Similarly, the Horry County Council's approval of Resolution R-73-12 was not supported by any factual grounds and was clearly contrary to the weight of the evidence. Section 1605 of the Horry County Zoning Ordinance states that "no new freestanding telecommunication tower shall be permitted unless the applicant demonstrates that no existing telecommunication

[2] The standard South Carolina courts apply to the review of a zoning board's decision is extremely similar to the standard courts apply when reviewing a county council's decision. *Compare Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 234, 642 S.E.2d 565, 567 (2007) ("a decision of a city zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion."), *with McSherry v. Spartanburg Cnty. Council*, 371 S.C. 586, 590, 641 S.E.2d 431, 433 (2007) (holding that a county council's "decisions should not be upset on appeal unless [they are] arbitrary, unreasonable, in obvious abuse of discretion, or in excess of lawfully delegated power.").

facility can accommodate the applicant's proposed use." American Tower failed to demonstrate that "no existing telecommunication facility can accommodate the applicant's proposed use" because the existing tower on Ms. Johnson's property is being used now for exactly the same purpose for which American Tower proposes to use the new tower.

25. The Council had no discretion to waive the requirement of Section 1605 unless American Tower established that use of the existing tower is not practical or warranted. HORRY COUNTY, SOUTH CAROLINA, CODE OF ORDINANCES, Chapter 13, Article VII, Section 13-73(b). The ordinance unequivocally outlines the only bases for determining that use of an existing tower is not practical or warranted. In order to enable the Council to properly waive the co-location requirement of Section 1605, American Tower must have provided the following information to the Council:

1. A list of all existing telecommunication towers within 2½ miles of the proposed tower;

2. Maps showing broadcast coverage from the proposed site together with coverage from American Tower's existing sites that would connect with and are adjacent to the proposed site;

3. Detailed information as to why the existing towers within 2½ miles of the proposed tower cannot reasonably be utilized for the proposed antenna installation; and

4. Any other relevant information related to the proposed site as may be requested.

HORRY COUNTY, SOUTH CAROLINA, CODE OF ORDINANCES, Chapter 13, Article VII, Section 13-73(c).

26. The existing tower on Ms. Johnson's property is within 2½ miles of American Tower's proposed location for its new tower. Yet American Tower offered no facts or evidence to show the Council that the existing tower could not serve its needs going forward, as required. Indeed, just the opposite is true. American Tower and, more importantly, the wireless companies

with antennas on the existing tower, currently use the existing tower for the same purposes for which American Tower's proposed new tower would be used. The longstanding and ongoing use of the existing tower demonstrates that the tower can continue to satisfy the wireless needs of the area.

27. In addition to the existing tower on Ms. Johnson's property, there is also another tower (the "***SBA Tower***"), already constructed, that also is within 2½ miles of American Tower's proposed location for its new tower. American Tower offered no facts or evidence to show the Council that the existing SBA Tower could not serve the carriers going forward.

28. This is not a case of divergent evidence and a County Council exercising discretion. American Tower completely failed to provide evidence mandated by County ordinances. Further, American Tower cannot supply the mandated evidence. All evidence does show and must show that the existing cell tower on Ms. Johnson's property could be used for American Tower's purported purpose in constructing the new tower, as the existing tower has done so for nearly two decades. American Tower therefore failed to provide the required "[d]etailed information as to why the existing towers within two and one-half (2½) miles of the proposed tower . . . cannot reasonably be utilized for the proposed antenna installation." HORRY COUNTY, SOUTH CAROLINA, CODE OF ORDINANCES, Chapter 13, Article VII, Section 13-73(c).

29. American Tower did not establish and the Council could not properly find that use of the existing tower was not practical or warranted, as contemplated by the local ordinance. The Council's decision to waive the co-location requirement of Section 1605 was not supported by any evidence and therefore should be considered arbitrary and should not be sustained. *See Bannum, Inc. v. City of Columbia*, 335 S.C. 202, 207, 516 S.E.2d 439, 440-41 (1999) (overturning zoning board's decision based on finding that "[its] decision was based, not on the

requirements of the 'special exception' ordinance", there was "simply no concrete evidence to support th[e] fact" upon which the board made its decision, and that "[t]his is simply insufficient to constitute 'any evidence' under our standard of review."); *see also Wyndham Enterprises, LLC v. City of N. Augusta*, __ S.E. 2d___, No. 5030, 2012 WL 3828237, at *4 (S.C. Ct. App. Sept. 5, 2012) (reversing zoning board's decision "because [its] decision was not supported by competent, substantial, and material evidence, and was based on opinion and speculation testimony . . .").

30. Plaintiffs have established a likelihood of success on the merits by presenting at least a reasonable question as to the existence of their rights. Plaintiffs have alleged facts sufficient to constitute a cause of action and are therefore entitled to a preliminary injunction. *Peek*, 367 S.C. at 456, 626 S.E.2d at 37 ("The determination of whether to grant an injunction should not be based on the merits of the underlying case except insofar as the merits may assist the trial court in determining whether a prima facie showing has been made."); *MailSource LLC v. M.A. Bailey & Assocs., Inc.*, 356 S.C. 363, 588 S.E.2d 635 (Ct. App. 2003) (same).

V.
CONCLUSION

31. For the reasons identified above, Plaintiffs respectfully request that the Court enter a temporary restraining order and preliminary injunction that prohibit American Tower from taking any actions in furtherance of constructing a new tower within 2½ miles of the existing tower and from taking down the existing tower.

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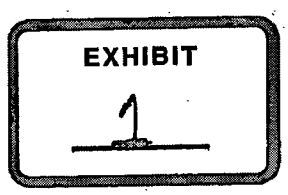
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EDITED TRANSCRIPT

AMT - American Tower Corp at Citi Global Property CEO Conference

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



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CORPORATE PARTICIPANTS

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Michael Bilerman *Citi - Analyst*

Mike Rollins *Citi - Analyst*

PRESENTATION

Michael Bilerman - *Citi - Analyst*

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

Jim Taiclet - *American Tower Corporation - CEO*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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So, we've got a lot of cash flow, we've got an allocation plan that Tom Bartlett, the CFO, and I really work hard to optimize on your behalf.

So to quickly summarize, American Tower's been a leader in the commercial real estate industry in the communications segment since the mid-1990s. We formally affected our restructure at the beginning of this year and initiated the recurring dividend for the first time. We're going to continue to utilize our large NOLs and very large depreciation and foreign earnings tax yield to pursue our growth strategy. So, we're going to be able to do both, provide the yield and offer the growth.

And what I really do like about the business is a combined just ability of a real estate model with the growth capital of technology. And not only in the US, but really globally. We're the only ones that can pursue that.

We're going to retain a strong balance sheet so that we can support our asset acquisition initiatives to bolster that strong organic growth. And just as a final word, we'd just like you to think of American Tower as a growth plus yield Company and be happy to take on the questions that you guys have. Thank you.

QUESTIONS AND ANSWERS

Michael Bilerman - *Citi - Analyst*

Thank you for that, Jim. I'm curious, you've obviously spent a lot of time with tower telecom investors over the years and have started meeting with a lot of REIT investors, given the conversion. And I'm just curious, what's the first question you get from a REIT investor versus what's the first question you get from a tower telecom investor?

Jim Taiclet - *American Tower Corporation - CEO*

The first question we typically get from the new REIT investor is how do these assets work? The time track, the structure, the length, who the counterparties are. And then quickly to follow usually are questions around technology. How does the actual technology work or what does that mean for leasing demand in the future? Those are the biggest questions I think from the REIT side.

And from the telecom side, Mike and his counterparts are very knowledgeable about the wireless carriers, but they'll ask us specifically about each carrier and what they're doing this year and how that will mix in with amendments and new leases and things like that. A little more specific.

Michael Bilerman - *Citi - Analyst*

And I'm curious, you've mentioned a couple of times, I know you had a REIT and real estate conference at a commercial real company, and as most real estate investors think about commercial real estate, you think about apartments as a place to live, shopping malls as a place to shop, industrial as place to move and store goods, a hotel as a place to stay. The data centers started to come out where they're selling power, right? But it's within an industrial box, highly improved industrial box. The towers I guess as commercial real estate is sort of one -- I think even a further step removed for people to sort of grasp onto. And I'm just curious how you sort of sell the space and just how does that business work from being in commercial real estate?

Jim Taiclet - *American Tower Corporation - CEO*

I mean our view is down the middle industrial piece of real estate. It's a mini data center, if you want to think of it that way. We provide key locations for transmission of one of the biggest and fastest growing businesses and industries in the United States, which is mobile telecom.

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

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

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

Michael Bilerman - *Citi - Analyst*

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

Jim Taiclet - *American Tower Corporation - CEO*

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

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

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

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

Mike Rollins - *Citi - Analyst*

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

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Jim Taiclet - *American Tower Corporation - CEO*

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

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

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

Mike Rollins - *Citi - Analyst*

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

Jim Taiclet - *American Tower Corporation - CEO*

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

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

Michael Bilerman - *Citi - Analyst*

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

Jim Taiclet - *American Tower Corporation - CEO*

Um-hmm.

Michael Bilerman - *Citi - Analyst*

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

Jim Taiclet - *American Tower Corporation - CEO*

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

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

Michael Bilerman - *Citi - Analyst*

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

Jim Taiclet - *American Tower Corporation - CEO*

Of this --

Michael Bilerman - *Citi - Analyst*

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

Jim Taiclet - *American Tower Corporation - CEO*

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

Michael Bilerman - *Citi - Analyst*

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

Jim Taiclet - *American Tower Corporation - CEO*

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

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

Michael Bilerman - *Citi - Analyst*

So these things can actually be lifted off the ground?

Jim Taiclet - *American Tower Corporation - CEO*

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

Michael Bilerman - *Citi - Analyst*

And the cost of doing that?

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Jim Taiclet - *American Tower Corporation - CEO*

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

Michael Bilerman - *Citi - Analyst*

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

Jim Taiclet - *American Tower Corporation - CEO*

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

Michael Bilerman - *Citi - Analyst*

Are there questions from the audience?

Unidentified Audience Member

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

Jim Taiclet - *American Tower Corporation - CEO*

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

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

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

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Unidentified Audience Member

(Inaudible question – microphone inaccessible)

Jim Taiclet - *American Tower Corporation - CEO*

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

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

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

Mike Rollins - *Citi - Analyst*

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

Jim Taiclet - *American Tower Corporation - CEO*

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

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

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

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

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

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

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

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

Unidentified Audience Member

(Inaudible question -- microphone inaccessible)

Michael Bilerman - *Citi - Analyst*

Jim, if you can just repeat the question.

Jim Taiclet - *American Tower Corporation - CEO*

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

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

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

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

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

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

Michael Bilerman - *Citi - Analyst*

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

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Jim Taiclet - *American Tower Corporation - CEO*

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

Michael Bilerman - *Citi - Analyst*

The sector in general.

Jim Taiclet - *American Tower Corporation - CEO*

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

Michael Bilerman - *Citi - Analyst*

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

Jim Taiclet - *American Tower Corporation - CEO*

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

Michael Bilerman - *Citi - Analyst*

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

Jim Taiclet - *American Tower Corporation - CEO*

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

Michael Bilerman - *Citi - Analyst*

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

Jim Taiclet - *American Tower Corporation - CEO*

In our sector it's build.

Michael Bilerman - *Citi - Analyst*

Great, thank you very much.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	CIVIL ACTION NO.: 2012-CP-26-8652
Tristar Investors, Inc., Minverva Realty, LLC and Angeline Johnson,	)	AFFIDAVIT OF DAVID SCHWERD SUBMITTED BY DEFENDANT HORRY COUNTY COUNCIL IN RESPONSE TO PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER
Plaintiff,	)	
vs.	)	
The Horry County Council and American Tower Corporation,	)	
Defendants.	)	

The attached Affidavit of David Schwerd with exhibits is filed on behalf of the Defendant Horry County Council in response to Plaintiffs' Application for Temporary Restraining Order and Preliminary Injunction. Based on attached, Defendant Horry County Council requests that the Court affirm the decision of Horry County Council in this matter. Defendant Horry County Council reserves its right to answer or otherwise plead in response to the allegations of the Complaint within the time frame allowed under the South Carolina Rules of Civil Procedure.

THOMAS & BRITTAIN, P.A.

Emma Ruth Brittain

Emma Ruth Brittain, SC Bar 5298
Post Office Box 1290
Myrtle Beach, South Carolina 29578
843-692-2628

December 5, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	CIVIL ACTION NO.: 2012-CP-26-8652
Tristar Investors, Inc., Minverva Realty, LLC and Angeline Johnson,	)	
	)	
Plaintiff,	)	**AFFIDAVIT OF DAVID SCHWERD**
	)	
vs.	)	
	)	
The Horry County Council and American Tower Corporation,	)	
	)	
Defendants.	)	

Personally appeared before me David Schwerd, being of sound mind and body, who, being duly sworn states as follows:

1. I am employed in the position of Principal Planner with the Horry County Planning and Zoning Department and have been employed in this Department since April 2004. I was the staff liaison for the Telecommunications Committee, a subcommittee of the Planning Commission from March through December of 2006. The committee was composed of Planning Commission members and industry representatives and was charged with crafting an ordinance to address issues that had arisen under the County's prior ordinance. I was the staff member who drafted the ordinance for review and approval. I have also been involved in the review of all telecommunication towers since the ordinance was adopted.

2. I am familiar with the American Towers, LLC, application for proposed relocation of a 300 foot self-support wireless telecommunications facility at the corner of Huggins Road and South Carolina Highway 9 to 215 Huggins Road, Loris, South Carolina, said application having been submitted on August 31, 2012. (See Attachment A).

3. American Towers, LLC, has engaged in communications with the Horry County Planning and Zoning Department since as early as August 8, 2012, regarding the tower relocation and provided a Federal Aviation Administration Determination of No Hazard to Air

Navigation along with an assurance that the proposed tower would contain only equipment meeting Federal Communication Rules and Regulations as required by Horry County Zoning Ordinance Article XVI, Section 1607(b). (See Attachment B).

4. American Towers, LLC's application was presented as a relocation of the tower; the current tower does not conform with the design requirements of Article XVI, Section 1611 of the Horry County Zoning Ordinance (the ordinance was enacted after the location of the current tower); the proposed relocated tower is designed to meet all requirements of the Article XVI, and will provide space for additional carriers.

5. The fall zone radius of the proposed relocated tower lies well within the new property location, while the fall zone of the current tower falls within the adjacent highway; accordingly, the proposed relocated tower advances the public safety interests of Horry County.

6. The application submitted by American Towers, LLC to Horry County Planning and Zoning meets the requirements of the Horry County Planning and Zoning Ordinance, and was reviewed as a relocation application, and not as a co-location application under Section 1605 (as alleged in the Complaint).

7. The application of American Towers, LLC, was approved by Horry County Council Resolution No. 73-12; the approval also requires American Towers, LLC, to remove the current tower within 120 days; under this requirement the co-location of the current tower does not violate the two and one-half mile requirement under Section 1605; the SBA tower was not considered by staff to violate the two and one-half mile requirement as that tower does not currently serve cellular antennas; the SBA tower was previously granted a co-location waiver from the existing American Tower site in 2003 by the Planning Commission (the approving body under the ordinance which was in effect in 2003) (See Attachment C: Horry County Decision Memorandum submitted by the Planning Department to Horry County Council).

8. In addition to the posting of notice of the proposed relocation on the property, the County provided notice of the proposed relocation to all adjacent property owners by written notice dated October 1, 2012. (See Attachment D).

9. Horry County Council considered this matter at its October 16, 2012 meeting; at this meeting, Tristar Investors, Inc., appeared through legal counsel, and presented arguments opposing American Tower's request; although at least one carrier located on the tower (Horry Telephone Company) had representatives present at the meeting, no carrier located on the current tower voiced any opposition to American Towers' application.

10. Horry County Council unanimously approved the Planning and Zoning Department's recommendation for approval of American Towers' application at the October 12, 2012, meeting. (See Attachment E; R. 73-12).

11. By letter dated October 11, 2012, Tristar submitted its application for construction of a replacement cellular tower at the same site of the tower currently used by American Tower. (See Attachment F).

12. The Horry County Zoning Department has reviewed Tri-Star's application and has recommended to Horry County Council that Tristar's application be denied. (See Attachments G and H).

FURTHER AFFIANT SAYETH NOT.

David Schwerd

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

Alicia J. Shelley
Notary Public of South Carolina
My Commission Expires: July 12, 2015

TRISTAR

TriStar Investors, Inc.
Whitehall Towers Office Building
470 Streets Run Road, Suite 300
Pittsburgh, Pennsylvania 15236

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Fax: 412.882.4632

www.tristarinvestors.com

October 11, 2012

David Schwerd
Principal Planner
Planning and Zoning Department
Government & Justice Center
1301 Second Avenue
Conway, SC 29526

Re: Replacement Cellular Tower;
200 Huggins Road a/k/a S Side of HWY 9, Loris, Horry County, South Carolina 29569

Dear Mr. Schwerd:

Please find enclosed a submittal package for the construction of a replacement cellular tower at 200 Huggins Road a/k/a S Side of HWY 9, Loris, Horry County, South Carolina 29569, tax parcel number: 037-00-02-075 ("Property") submitted by Minerva Realty, LLC/TriStar Investors, Inc. ("TriStar"). The existing tower has been at the Property since 1996. The need for the replacement tower arises from the possibility that the existing tower will be removed at the expiration of the ground lease between the Property owner and the tower tenant in January 2015.

In order to maintain continuity of local wireless service, including 911 emergency service, and the view shed, the replacement tower is proposed for approximately the same location as the existing tower on the Property. The replacement tower shall be self-supporting and it will not exceed the height of the existing tower, 287'.

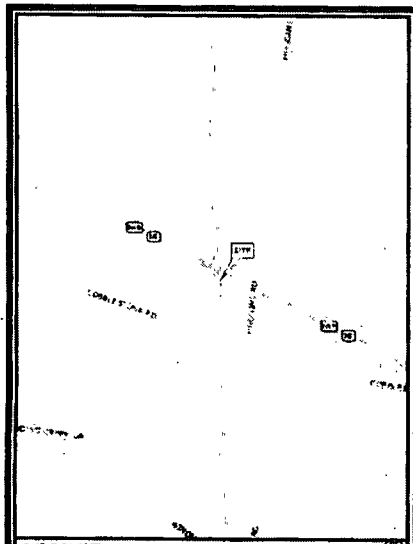
Although, TriStar prefers to utilize the existing tower, we are fully prepared to replace the tower. The replacement tower, similar to the existing tower, shall accommodate multiple tenants with room to meet future collocation demand. TriStar believes that the replacement tower is in the best interest of the local community for the reasons indicated herein and in the submittal package.

We look forward to presenting in front of Council. In the event you have any questions, please call me at 412-368-4633.

Regards,

David C. Bruening

Encl.



VICINITY MAP

PROJECT INFORMATION:

REPLACEMENT TELECOMMUNICATIONS FACILITY

SITE NAME:

FINKLEA SC

SITE NUMBER:

17588

SITE ADDRESS:

200 HUGGINS RD.
LORIS, SC 29569
(HORRY COUNTY)

APPLICANT/TOWER OWNER:

TRISTAR

470 STREETS RUN ROAD, SUITE 300
PITTSBURGH, PA 15236
OFFICE: (877) 869-3705

PLANS PREPARED BY:

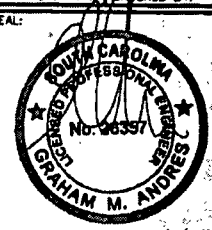
SOUTH CAROLINA CERTIFICATE OF AUTHORIZATION
Tower Engineering Professionals, Inc.
CO1991

TOWER ENGINEERING PROFESSIONALS
3703 JUNCTION BOULEVARD
RALEIGH, NC 27603-5253
919.661.6351

REV	DATE	ISSUED FOR:
1	10-12-12	SEALED ZONING
0	10-11-12	ZONING

DRAWN BY: JAS | CHECKED BY: GMA

SEAL:

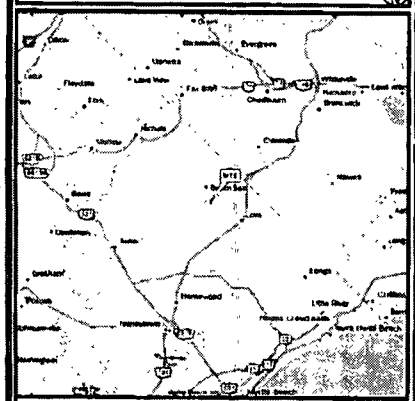


SEAL:

SHEET NUMBER: T-1

REVISION: 1

TEP # 126227



LOCATION MAP

FROM CONWAY, SC: TAKE PREFERRED ROUTE TO US-701 NORTH AND DRIVE 10 MILES BEFORE TAKING A SLIGHT LEFT ONTO S CAROLINA 410 WEST. CONTINUE FOR 9.4 MILES AND TURN RIGHT ONTO S CAROLINA 9 BUS SOUTH. SITE WILL BE ON THE RIGHT IN 0.7 MILES.

DRIVING DIRECTIONS

LATITUDE: N 34° 05' 33.280" (NAD '83)
LONGITUDE: W 78° 57' 59.391" (NAD '83)
GROUND ELEVATION: 88.6' (NAVD '88)

TOWER COORDINATES

ALL WORK AND MATERIALS SHALL BE PERFORMED AND INSTALLED IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE FOLLOWING CODES AS ADOPTED BY THE LOCAL GOVERNING AUTHORITIES. NOTHING IN THESE PLANS IS TO BE CONSTRUED TO PERMIT WORK NOT CONFORMING TO THE LATEST EDITIONS OF THE FOLLOWING:

1. INTERNATIONAL BUILDING CODE (2009 EDITION)
2. LOCAL BUILDING CODE
3. CITY/COUNTY ORDINANCES
4. ANSI/TIA/EIA-222-G
5. NATIONAL ELECTRIC CODE (2009 EDITION)

CODE COMPLIANCE

SHEET	DESCRIPTION	REV
T1	TITLE SHEET	1
N1	GENERAL NOTES	1
Z1	SITE PLAN	1
Z2	TOWER ELEVATION	1
Z3	COMPOUND DETAIL	1
Z4	LANDSCAPING PLAN	1

INDEX OF SHEETS

TOWER OWNER:
NAME: TRISTAR PROPERTIES
ADDRESS: 470 STREETS RUN ROAD, SUITE 300
CITY, STATE, ZIP: PITTSBURGH, PA 15238
CONTACT: CRAIG PEARSON
PHONE: (412) 882-4630

APPLICANT / LESSEE:
NAME: TRISTAR PROPERTIES
ADDRESS: 470 STREETS RUN ROAD, SUITE 300
CITY, STATE, ZIP: PITTSBURGH, PA 15238
CONTACT: CRAIG PEARSON
PHONE: (412) 882-4630

PROPERTY OWNER:
NAME: ANGELINE D. JOHNSON
ADDRESS: 7360 GURLEY RD
CITY, STATE, ZIP: LORIS, SC 29569

AREA OF CONSTRUCTION:	1,600± SQ. FT.
PRESENT OCCUPANCY TYPE:	TELECOMMUNICATIONS FACILITY
PROPOSED OCCUPANCY TYPE:	TELECOMMUNICATIONS FACILITY
CURRENT ZONING:	FA
TAX MAP NUMBER:	037-00-02-075
JURISDICTION:	HORRY COUNTY

UTILITIES:
POWER COMPANY: HORRY ELECTRIC COOPERATIVE
CONTACT: CUSTOMER SERVICE
PHONE: (843) 369-2711
METER # NEAR SITE: UNKNOWN

TELEPHONE COMPANY: HORRY TELEPHONE COOPERATIVE
CONTACT: UNKNOWN
PHONE: (843) 369-8774
PEDESTAL # NEAR SITE: UNKNOWN

PROJECT SUMMARY

SURVEYOR:
NAME: TIMOTHY L. DAVIS P.L.S.
ADDRESS: P.O. BOX 110
CITY, STATE, ZIP: AYNOR, SC 29511
CONTACT: TIMOTHY L. DAVIS, P.L.S.
PHONE: (843) 358-1271

CIVIL ENGINEER:
NAME: TOWER ENGINEERING PROFESSIONALS, INC.
ADDRESS: 3703 JUNCTION BOULEVARD
CITY, STATE, ZIP: RALEIGH, NC 27603
CONTACT: GRAHAM ANDRES, P.E.
PHONE: (919) 661-6351

STRUCTURAL ENGINEER:
NAME: N/A
ADDRESS: N/A
CITY, STATE, ZIP: N/A
CONTACT: N/A
PHONE: N/A

ELECTRICAL ENGINEER:
NAME: N/A
ADDRESS: N/A
CITY, STATE, ZIP: N/A
CONTACT: N/A
PHONE: N/A

GEOTECHNICAL ENGINEER:
NAME: N/A
ADDRESS: N/A
CITY, STATE, ZIP: N/A
CONTACT: N/A
PHONE: N/A

TOWER MANUFACTURER:
NAME: VALMONT INDUSTRIES, INC.
ADDRESS: ONE VALMONT PLAZA
CITY, STATE, ZIP: OMAHA, NE 68154
CONTACT: UNKNOWN
PHONE: (402) 963-1188

PROJECT TEAM

1. ALL REFERENCES MADE TO OWNER IN THESE DOCUMENTS SHALL BE CONSIDERED TRISTAR INVESTORS OR IT'S DESIGNATED REPRESENTATIVE.

2. ALL WORK PRESENTED ON THESE DRAWINGS MUST BE COMPLETED BY THE CONTRACTOR UNLESS NOTED OTHERWISE. THE CONTRACTOR MUST HAVE CONSIDERABLE EXPERIENCE IN PERFORMANCE OF WORK SIMILAR TO THAT DESCRIBED HEREIN. BY ACCEPTANCE OF THIS ASSIGNMENT, THE CONTRACTOR IS ATTESTING THAT HE DOES HAVE SUFFICIENT EXPERIENCE AND ABILITY, THAT HE IS KNOWLEDGEABLE OF THE WORK TO BE PERFORMED AND THAT HE IS PROPERLY LICENSED AND PROPERLY REGISTERED TO DO THIS WORK IN THE STATE OF SOUTH CAROLINA.

3. THE STRUCTURE SHALL BE DESIGNED IN ACCORDANCE WITH ANSI/TIA-222-G, 2005, FOR AN 130 MPH BASIC WIND LOAD WITHOUT ICE AND 75% OF THE BASIC WIND LOAD PLUS 1/2" RADIAL ICE. THIS CONFORMS TO THE REQUIREMENTS OF THE INTERNATIONAL BUILDING CODE, 2006 EDITION.

4. WORK SHALL BE COMPLETED IN ACCORDANCE WITH THE INTERNATIONAL BUILDING CODE, 2006 EDITION.

5. UNLESS SHOWN OR NOTED OTHERWISE ON THE CONTRACT DRAWINGS, OR IN THE SPECIFICATIONS, THE FOLLOWING NOTES SHALL APPLY TO THE MATERIALS LISTED HEREIN, AND TO THE PROCEDURES TO BE USED ON THIS PROJECT.

6. ALL HARDWARE ASSEMBLY MANUFACTURER'S INSTRUCTIONS SHALL BE FOLLOWED EXACTLY AND SHALL SUPERSEDE ANY CONFLICTING NOTES ENCLOSED HEREIN.

7. IT IS THE CONTRACTOR'S SOLE RESPONSIBILITY TO DETERMINE ERECTION PROCEDURE AND SEQUENCE TO INSURE THE SAFETY OF THE STRUCTURE AND IT'S COMPONENT PARTS DURING ERECTION AND/OR FIELD MODIFICATIONS. THIS INCLUDES, BUT IS NOT LIMITED TO, THE ADDITION OF TEMPORARY BRACING, GUYS OR TIE DOWNS THAT MAY BE NECESSARY. SUCH MATERIAL SHALL BE REMOVED AND SHALL REMAIN THE PROPERTY OF THE CONTRACTOR AFTER THE COMPLETION OF THE PROJECT.

8. ALL DIMENSIONS, ELEVATIONS, AND EXISTING CONDITIONS SHOWN ON THE DRAWINGS SHALL BE FIELD VERIFIED BY THE CONTRACTOR PRIOR TO BEGINNING ANY MATERIALS ORDERING, FABRICATION OR CONSTRUCTION WORK ON THIS PROJECT. CONTRACTOR SHALL NOT SCALE CONTRACT DRAWINGS IN LIEU OF FIELD VERIFICATION. ANY DISCREPANCIES SHALL BE IMMEDIATELY BROUGHT TO THE ATTENTION OF THE OWNER AND THE OWNER'S ENGINEER. THE DISCREPANCIES MUST BE RESOLVED BEFORE THE CONTRACTOR IS TO PROCEED WITH THE WORK. THE CONTRACT DOCUMENTS DO NOT INDICATE THE METHOD OF CONSTRUCTION. THE CONTRACTOR SHALL SUPERVISE AND DIRECT THE WORK AND SHALL BE SOLELY RESPONSIBLE FOR ALL CONSTRUCTION MEANS, METHODS, TECHNIQUES, SEQUENCES, AND PROCEDURES. OBSERVATION VISITS TO THE SITE BY THE OWNER AND/OR THE ENGINEER SHALL NOT INCLUDE INSPECTION OF THE PROTECTIVE MEASURES OR THE PROCEDURES.

9. ALL MATERIALS AND EQUIPMENT FURNISHED SHALL BE NEW AND OF GOOD QUALITY, FREE FROM FAULTS AND DEFECTS AND IN CONFORMANCE WITH THE CONTRACT DOCUMENTS. ANY AND ALL SUBSTITUTIONS MUST BE PROPERLY APPROVED AND AUTHORIZED IN WRITING BY THE OWNER AND ENGINEER PRIOR TO INSTALLATION. THE CONTRACTOR SHALL FURNISH SATISFACTORY EVIDENCE AS TO THE KIND AND QUALITY OF THE MATERIALS AND EQUIPMENT BEING SUBSTITUTED.

10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR INITIATING, MAINTAINING, AND SUPERVISING ALL SAFETY PRECAUTIONS AND PROGRAMS IN CONNECTION WITH THE WORK. THE CONTRACTOR IS RESPONSIBLE FOR INSURING THAT THIS PROJECT AND RELATED WORK COMPLIES WITH ALL APPLICABLE LOCAL, STATE, AND FEDERAL SAFETY CODES AND REGULATIONS GOVERNING THIS WORK.

11. ACCESS TO THE PROPOSED WORK SITE MAY BE RESTRICTED. THE CONTRACTOR SHALL COORDINATE INTENDED CONSTRUCTION ACTIVITY, INCLUDING WORK SCHEDULE AND MATERIALS ACCESS, WITH THE TRISTAR PROJECT MANAGER.

12. BILL OF MATERIALS AND PART NUMBERS LISTED ON CONSTRUCTION DRAWINGS ARE INTENDED TO AID CONTRACTOR/OWNER. CONTRACTOR/OWNER SHALL VERIFY PARTS AND QUANTITIES WITH MANUFACTURER PRIOR TO BIDDING AND/OR ORDERING MATERIALS.

13. ALL PERMITS THAT MUST BE OBTAINED ARE THE RESPONSIBILITY OF THE CONTRACTOR. THE CONTRACTOR WILL BE RESPONSIBLE FOR ABIDING BY ALL CONDITIONS AND REQUIREMENTS OF THE PERMITS.

14. 24 HOURS PRIOR TO THE BEGINNING OF ANY CONSTRUCTION, THE CONTRACTOR MUST NOTIFY THE APPLICABLE JURISDICTIONAL (STATE, COUNTY OR CITY) ENGINEER.

15. THE CONTRACTOR SHALL REWORK (DRY, SCARIFY, ETC.) ALL MATERIAL NOT SUITABLE FOR SUBGRADE IN ITS PRESENT STATE. AFTER REWORKING, IF THE MATERIAL REMAINS UNSUITABLE, THE CONTRACTOR SHALL UNDERCUT THIS MATERIAL AND REPLACE WITH APPROVED MATERIAL. ALL SUBGRADES SHALL BE PROOFROLLED WITH A FULLY LOADED TANDEM AXLE DUMP TRUCK PRIOR TO PAVING. ANY SOFT MATERIAL SHALL BE REWORKED OR REPLACED.

16. THE CONTRACTOR IS REQUIRED TO MAINTAIN ALL PIPES, DITCHES, AND OTHER DRAINAGE STRUCTURES FREE FROM OBSTRUCTION UNTIL WORK IS ACCEPTED BY THE OWNER. THE CONTRACTOR IS RESPONSIBLE FOR ANY DAMAGES CAUSED BY FAILURE TO MAINTAIN DRAINAGE STRUCTURE IN OPERABLE CONDITION.

17. ALL MATERIALS AND WORKMANSHIP SHALL BE WARRANTED FOR ONE YEAR FROM ACCEPTANCE DATE.

18. ALL BUILDING DIMENSIONS SHALL BE VERIFIED WITH THE PLANS (LATEST REVISION) PRIOR TO COMMENCING CONSTRUCTION. NOTIFY THE ENGINEER IMMEDIATELY IF ANY DISCREPANCIES ARE DISCOVERED. THE OWNER SHALL HAVE A SET OF APPROVED PLANS AVAILABLE AT THE SITE AT ALL TIMES WHILE WORK IS BEING PERFORMED. A DESIGNATED RESPONSIBLE EMPLOYEE SHALL BE AVAILABLE FOR CONTACT BY GOVERNING AGENCY INSPECTORS.

19. ANY BUILDINGS ON THIS SITE ARE INTENDED TO SHELTER EQUIPMENT WHICH WILL ONLY BE PERIODICALLY MAINTAINED, AND ARE NOT INTENDED FOR HUMAN OCCUPANCY.

20. TEMPORARY FACILITIES FOR PROTECTION OF TOOLS AND EQUIPMENT SHALL CONFORM TO LOCAL REGULATIONS AND SHALL BE THE CONTRACTOR'S RESPONSIBILITY.

21. RENTAL CHARGES, SAFETY, PROTECTION AND MAINTENANCE OF RENTED EQUIPMENT SHALL BE THE CONTRACTOR'S RESPONSIBILITY.

22. THE CONTRACTOR AND ITS SUBCONTRACTORS SHALL CARRY LIABILITY INSURANCE IN THE AMOUNTS AND FORM IN ACCORDANCE WITH TRISTAR SPECIFICATIONS. CERTIFICATES DEMONSTRATING PROOF OF COVERAGE SHALL BE PROVIDED TO TRISTAR PRIOR TO THE START OF THE WORK ON THE PROJECT.

23. THESE DOCUMENTS DO NOT INCLUDE THE NECESSARY COMPONENTS FOR CONSTRUCTION SAFETY. SAFETY, CARE OF ADJACENT PROPERTIES, AND COMPLIANCE WITH STATE AND FEDERAL REGULATIONS REGARDING SAFETY, SHALL BE THE CONTRACTOR'S RESPONSIBILITY.

24. THE CONTRACTOR SHALL CONTACT ALL APPLICABLE UTILITY SERVICES TO VERIFY LOCATIONS OF EXISTING UTILITIES AND REQUIREMENTS FOR NEW UTILITY CONNECTIONS PRIOR TO EXCAVATING.

25. THE CONTRACTOR SHALL MAINTAIN THE JOB CLEAR OF TRASH AND DEBRIS. ALL WASTE MATERIALS SHALL BE REMOVED FROM THE SITE PRIOR TO SUBSTANTIAL COMPLETION AND PRIOR TO FINAL ACCEPTANCE. THE CONTRACTOR SHALL FURNISH ONE 55 GALLON BARREL AND TRASH BAGS, AND SHALL REMOVE TRASH, DEBRIS, ETC., ON A DAILY BASIS.

26. COSTS FOR BUILDING PERMITS, LANDFILL TAXES, USE TAXES, SALES TAXES AND OTHER CHARGES RELATIVE TO CONSTRUCTION OF THIS PROJECT SHALL BE INCLUDED IN THE CONTRACT PRICE.

27. THE CONTRACTOR SHALL VISIT THE SITE AND BECOME FAMILIAR WITH ALL CONDITIONS PRIOR TO SUBMITTING HIS PROPOSAL. CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND CONDITIONS SHOWN ON THESE DRAWINGS WITH THOSE AT THE SITE. ANY VARIATION WHICH REQUIRES PHYSICAL CHANGE SHALL BE BROUGHT TO THE ATTENTION OF THE TRISTAR PROJECT ENGINEER FOR FACILITIES/CONSTRUCTION.

28. THE CONTRACTOR SHALL GUARANTEE THE WORK PERFORMED ON THE PROJECT BY THE CONTRACTOR AND ANY OR ALL OF THE SUBCONTRACTORS WHO PERFORMED WORK FOR THE CONTRACTOR ON THIS PROJECT. THE GUARANTEE SHALL BE FOR A FULL YEAR FOLLOWING ISSUANCE OF THE FINAL PAYMENT OF RETAINAGE.

GENERAL NOTES

PLANS PREPARED FOR:

TRISTAR

470 STREETS RUN ROAD, SUITE 300
PITTSBURGH, PA 15236
OFFICE: (877) 889-3705

PROJECT INFORMATION:

FINKLEA SC
TRISTAR # 17588

200 HUGGINS RD
LORIS, SC 29569
(HORRY COUNTY)

PLANS PREPARED BY:

SOUTH CAROLINA CERTIFICATE OF AUTHORIZATION
Tower Engineering Professionals, Inc.
C01991

TOWER ENGINEERING PROFESSIONALS
3703 JUNCTION BOULEVARD
RALEIGH, NC 27603-5263
OFFICE: (919) 661-6351

SEAL:

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 26357
GRAHAM M. ANDRES
October 12, 2012

REV	DATE	ISSUED FOR:
1	10-12-12	SEALED ZONING
0	10-11-12	ZONING

DRAWN BY: JAS | CHECKED BY: MWC

SHEET TITLE:

GENERAL NOTES

SHEET NUMBER: **N-1**

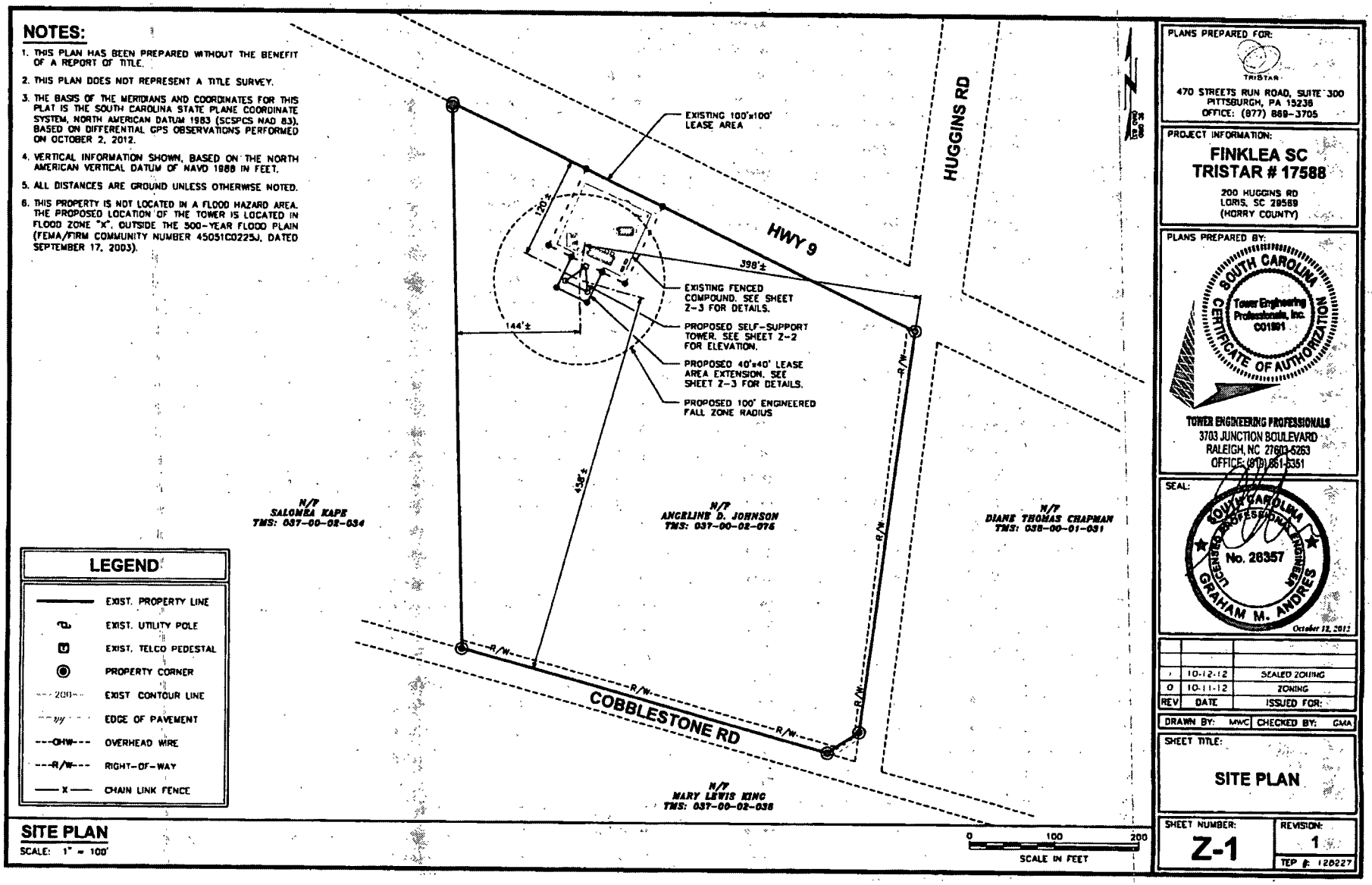
REVISION: 1

TEP #: 128227

ROA_0258

NOTES:

1. THIS PLAN HAS BEEN PREPARED WITHOUT THE BENEFIT OF A REPORT OF TITLE.
2. THIS PLAN DOES NOT REPRESENT A TITLE SURVEY.
3. THE BASIS OF THE MERIDIANS AND COORDINATES FOR THIS PLAT IS THE SOUTH CAROLINA STATE PLANE COORDINATE SYSTEM, NORTH AMERICAN DATUM 1983 (SCSPCS NAD 83), BASED ON DIFFERENTIAL GPS OBSERVATIONS PERFORMED ON OCTOBER 2, 2012.
4. VERTICAL INFORMATION SHOWN, BASED ON THE NORTH AMERICAN VERTICAL DATUM OF NAVD 1988 IN FEET.
5. ALL DISTANCES ARE GROUND UNLESS OTHERWISE NOTED.
6. THIS PROPERTY IS NOT LOCATED IN A FLOOD HAZARD AREA. THE PROPOSED LOCATION OF THE TOWER IS LOCATED IN FLOOD ZONE "X", OUTSIDE THE 500-YEAR FLOOD PLAIN (FEMA/FIRM COMMUNITY NUMBER 45051C0225J, DATED SEPTEMBER 17, 2003).



LEGEND

- EXIST. PROPERTY LINE
- EXIST. UTILITY POLE
- EXIST. TELCO PEDESTAL
- PROPERTY CORNER
- 200 EXIST. CONTOUR LINE
- EDGE OF PAVEMENT
- OHW OVERHEAD WIRE
- R/W RIGHT-OF-WAY
- X CHAIN LINK FENCE

SITE PLAN

SCALE: 1" = 100'

PLANS PREPARED FOR:

TRISTAR

470 STREETS RUN ROAD, SUITE 300
PITTSBURGH, PA 15236
OFFICE: (877) 869-3705

PROJECT INFORMATION:

FINKLEA SC
TRISTAR # 17588

200 HUGGINS RD
LORIS, SC 29569
(HORRY COUNTY)

PLANS PREPARED BY:

SOUTH CAROLINA CERTIFICATE OF AUTHORIZATION
Tower Engineering Professionals, Inc.
C01891

TOWER ENGINEERING PROFESSIONALS
3703 JUNCTION BOULEVARD
RALEIGH, NC 27603-5263
OFFICE: (919) 661-5351

SEAL:

SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 28357
GRAHAM M. ANDRES
October 12, 2012

REV	DATE	ISSUED FOR:
1	10-12-12	SEALED ZONING
0	10-11-12	ZONING

DRAWN BY: MWC | CHECKED BY: GMA

SHEET TITLE:

SITE PLAN

SHEET NUMBER: **Z-1**

REVISION: 1

TEP #: 120227

ROA_0259

PLANS PREPARED FOR:
TRISTAR
470 STREETS RUN ROAD, SUITE 300
PITTSBURGH, PA 15236
OFFICE: (877) 869-3705

PROJECT INFORMATION:

FINKLEA SC
TRISTAR # 17588

200 HUGGINS RD
LORIS, SC 29569
(HORRY COUNTY)

PLANS PREPARED BY:
SOUTH CAROLINA CERTIFICATE OF AUTHORIZATION
Tower Engineering Professionals, Inc.
C01991
TOWER ENGINEERING PROFESSIONALS
3703 JUNCTION BOULEVARD
RALEIGH, NC 27603-5263
OFFICE: (919) 661-6351

SEAL:
SOUTH CAROLINA REGISTERED PROFESSIONAL ENGINEER
No. 28357
GRAHAM M. ANDRES
October 12, 2012

REV	DATE	ISSUED FOR:
1	10-12-12	SEALED ZONING
0	10-11-12	ZONING

DRAWN BY: JAS | CHECKED BY: KSM

SHEET TITLE:

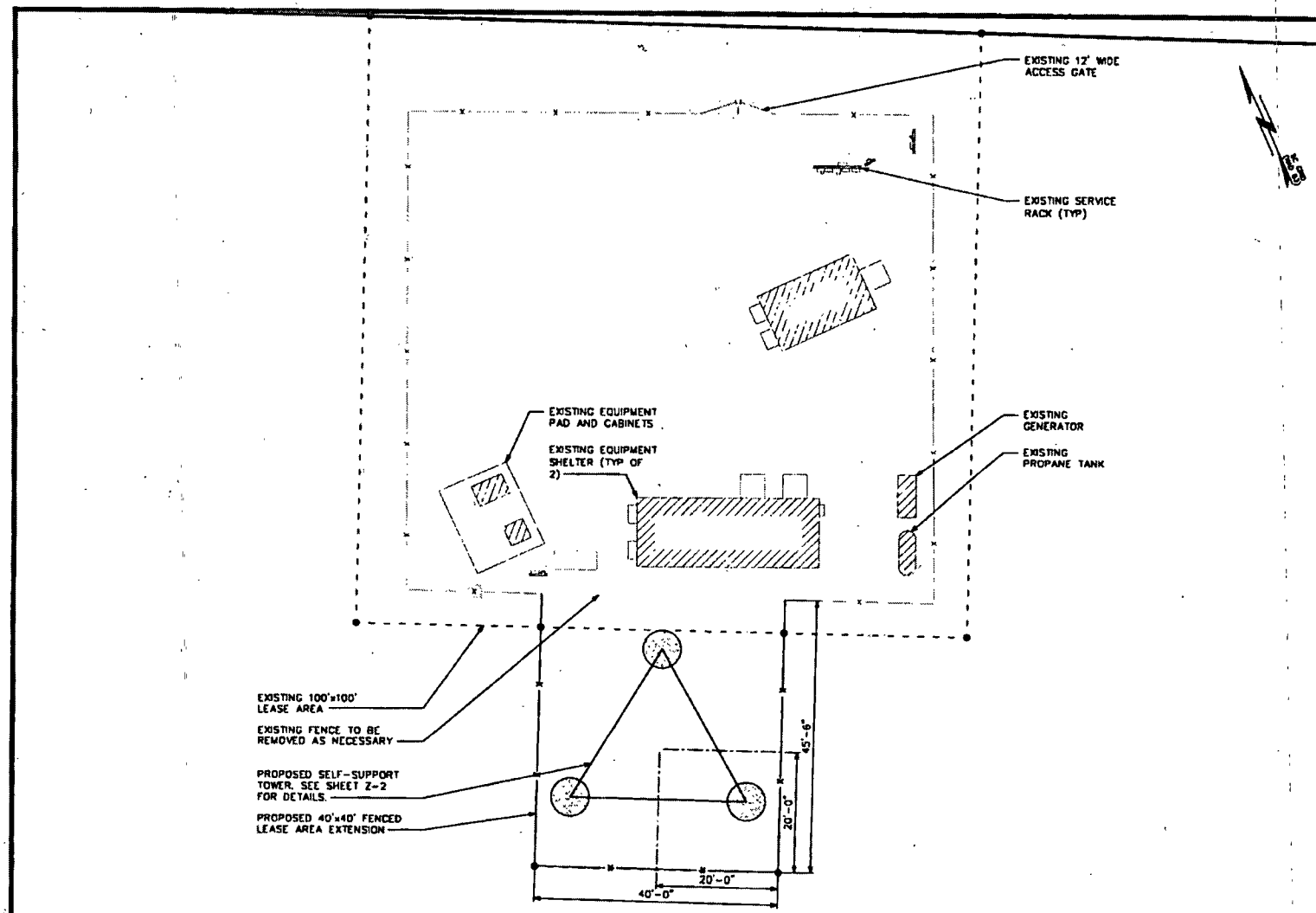
TOWER ELEVATION

SHEET NUMBER: **Z-2**

REVISION: 1

TEP #: 126227

ROA_0260



COMPOUND DETAIL

SCALE: 1/16" = 1'-0"

0 16 32

SCALE IN FEET

PLANS PREPARED FOR:

TRISTAR

470 STREETS RUN ROAD, SUITE 300
PITTSBURGH, PA 15238
OFFICE: (877) 889-3705

PROJECT INFORMATION:

FINKLEA SC
TRISTAR # 17588

200 HUGGINS RD
LORIS, SC 29569
(HORRY COUNTY)

PLANS PREPARED BY:

SOUTH CAROLINA CERTIFICATE OF AUTHORIZATION
Tower Engineering Professionals, Inc.
C01991

TOWER ENGINEERING PROFESSIONALS
3703 JUNCTION BOULEVARD
RALEIGH, NC 27603-5263
OFFICE: (919) 661-6351

SEAL:

SOUTH CAROLINA PROFESSIONAL ENGINEER
No. 28357
GRAHAM M. ANDRES
October 12, 2012

REV	DATE	ISSUED FOR:
1	10-12-12	SEALED ZONING
0	10-11-12	ZONING

DRAWN BY: JAS | CHECKED BY: GMA

SHEET TITLE:

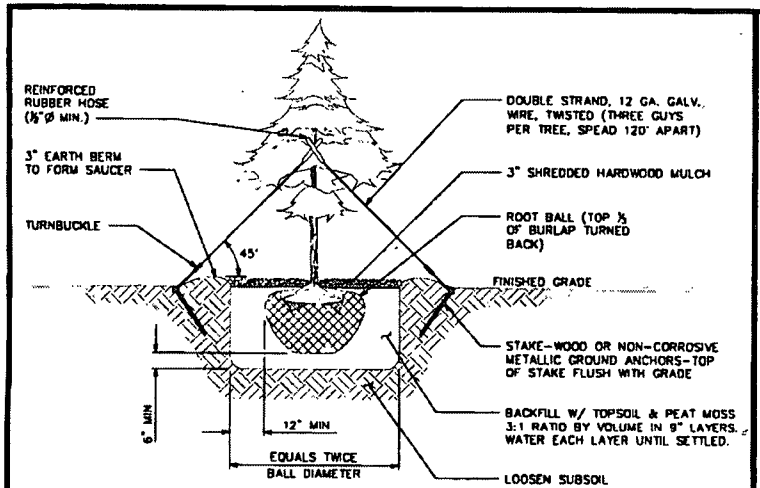
COMPOUND DETAIL

SHEET NUMBER: **Z-3**

REVISION: 1

TEP #: 126227

ROA_0261

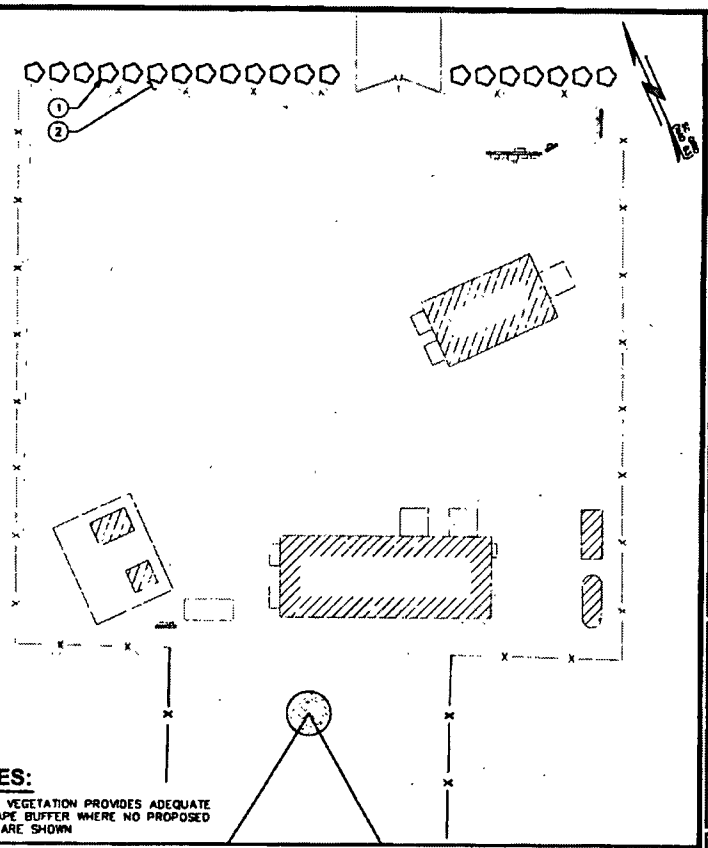


SHRUB PLANTING DETAIL

SCALE: N.T.S.

LANDSCAPE NOTES:

1. TOPSOIL TO BE PROVIDED BY SITE CONTRACTOR IN ROUGH GRADE TO WITHIN 1" OF FINISH GRADE.
2. EACH PLANT TO BE IN THE TOP OF ITS CLASS AFTER SHEARING AND PRUNING.
3. EACH PLANT TO BE FREE FROM DISEASE, INSECT INFESTATION, AND MECHANICAL INJURIES, AND IN ALL RESPECTS BE SUITABLE FOR FIELD PLANTING.
4. ALL PLANTS TO BE FULLY GUARANTEED (LABOR AND MATERIALS) FOR A PERIOD OF NOT LESS THAN ONE (1) YEAR FROM DATE OF INSTALLATION.
5. ALL PLANTS SHALL CONFORM TO THE AMERICAN STANDARD FOR NURSERY STOCK, ANSI Z60.1-1973 IN REGARD TO SIZING, GROWING, AND B&B SPECIFICATIONS.
6. THE CONTRACTOR SHALL PROTECT ALL EXISTING TREES AND SHRUBS WITHIN THE CONSTRUCTION AREA IDENTIFIED AS "TO REMAIN" FROM DAMAGE BY EQUIPMENT AND CONSTRUCTION ACTIVITIES.



LANDSCAPING PLAN

SCALE: 1/16" = 1'-0"

PLANTING SCHEDULE

ITEM	QTY.	BOTANICAL NAME	COMMON NAME	HEIGHT @ PLANTING	HEIGHT @ 2 YRS.	SPREAD/ CALIPER	SPACING	REMARKS
SHRUB								
①	20	*(x Cupressocyparis leylandii)*	LEYLAND CYPRESS	30" (MIN)	5'-0" (MIN)	1-3/4"	SEE PLAN THIS SHEET	SHOWN AS ⬡
MULCH								
②	-		MULCH	-	-	-	-	APPLY 3"-4" DEEP FROM THE TRUNKLINE TO THE DRIPLINE. FOR GROUND COVER - APPLY 1"-2" DEEP

PLANS PREPARED FOR:
TRISTAR
470 STREETS RUN ROAD, SUITE 300
PITTSBURGH, PA 15236
OFFICE: (877) 869-3705

PROJECT INFORMATION:

FINKLEA SC
TRISTAR # 17588

200 HUGGINS RD
LORIS, SC 29569
(HORRY COUNTY)

PLANS PREPARED BY:
SOUTH CAROLINA CERTIFICATE OF AUTHORIZATION
Tower Engineering Professionals, Inc. C01801
TOWER ENGINEERING PROFESSIONALS
3703 JUNCTION BOULEVARD
RALEIGH, NC 27603-5263
OFFICE: (919) 661-6351

SEAL:
SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER
No. 28357
GRAHAM M. ANDRES
October 15, 2012

REV	DATE	ISSUED FOR:
1	10-12-12	SEALED ZONING
0	10-11-12	ZONING

DRAWN BY: JAS | CHECKED BY: KSAI

SHEET TITLE:
LANDSCAPING PLAN

SHEET NUMBER: **Z-4**
REVISION: 1
TEP #: 126727

ROA_0262

ROA_0263

STATE OF SOUTH CAROLINA
HORRY COUNTY

I TIMOTHY L. DAVIS HEREBY STATE THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS _C_ SURVEY AS SPECIFIED THEREIN.

TIMOTHY L. DAVIS, P.L.S. # 27445
P. O. BOX 118
AYNOR, SC 29511
PHONE 843.358.1271
DAVIS118@SCCOAST.NET

NOTES :

1) THIS PARCEL IS LOCATED IN FLOOD ZONE X AS SHOWN ON PANEL NO. 45051C0225J DATED SEPTEMBER 17, 2003 --FEDERAL INSURANCE ADMINISTRATION FLOOD INSURANCE RATE MAPS.
2) PARENT TAX MAP NO.: TMS # 037-00-03-075
3) DATE OF FIELD SURVEY : OCTOBER 2, 2012
4) THIS PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS AND/OR RIGHT-OF-WAYS OF RECORD.
5) OWNER OF RECORD : ANGELINE D JOHNSON
6) LAND USE : FARM
7) TOTAL ACREAGE : 6.78 ACRES
8) S.C. GEODETIC CONTROL IS BY WAY OF THE S.C. VRS NETWORK
9) REFERENCE : DEED BOOK 1888, PAGE 785
REFERENCE PLAT # 1
10) ALL DISTANCES ARE GROUND UNLESS NOTED
11) COMBINED SCALE FACTOR = 0.99982197788935

REFERENCE PLATS:

1) PLAT OF 6.77 ACRES FOR ANGELINE D. JOHNSON DATED AUGUST 27, 1996 BY COASTAL LAND SURVEYORS, INC.

CERTIFICATE OF OWNERSHIP AND DEDICATION

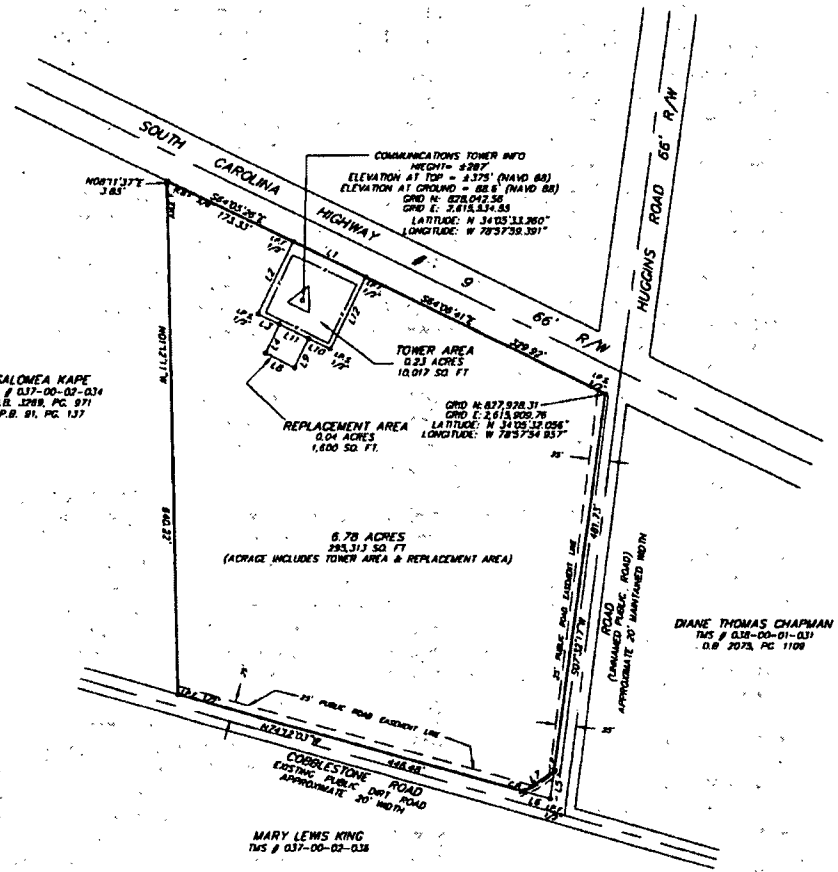
THE UNDERSIGNED HEREBY ACKNOWLEDGE THAT I AM (WE ARE) THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I (WE) HEREBY ADOPT THIS (PLAN OF DEVELOPMENT/PLAT) WITH MY (OUR) FREE CONSENT AND THAT I (WE) HEREBY DEDICATE ALL ITEMS AS SPECIFICALLY SHOWN OR INDICATED ON SAID PLAT.

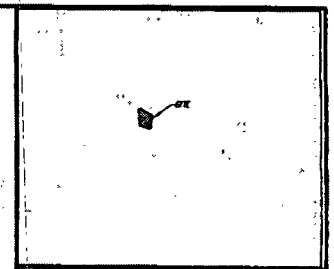
NAME: _____ SIGNATURE: _____ DATE: _____
NAME: _____ SIGNATURE: _____ DATE: _____

NON-EVALUATION CERTIFICATE
THE PROPERTY OWNER OF RECORD HEREBY ACKNOWLEDGES THAT THE SURVEYED PARCEL AND OR TRACTS REMAINDER HAS NOT BEEN REVIEWED TO DETERMINE THE AVAILABILITY OF ON-SITE WASTE DISPOSAL SYSTEMS OR PROVISIONS OF PUBLIC WATER OR SEWER SERVICES. RECORDATION OF THIS PLAT SHALL NOT BE IMPLIED OR EXPRESSED CONSENT BY HORRY COUNTY THAT THE LOTS OR OTHER LAND DIVISIONS SHOWN HEREON ARE CAPABLE OF BEING SERVICED BY ON-SITE DISPOSAL OR PUBLIC WATER OR SEWER SYSTEMS UNLESS OTHERWISE STATED HEREON. ALL SURVEYED TRACTS AND/OR PARCELS REMAINDERS HAVE NOT BEEN REVIEWED FOR ON-SITE WASTE DISPOSAL SYSTEMS OR PUBLIC WATER OR SEWER SERVICES

NAME: _____ SIGNATURE: _____ DATE: _____
NAME: _____ SIGNATURE: _____ DATE: _____







VICINITY MAP NTS

LEGEND

I.P.S.	IRON PIPE SET
I.P.F.	IRON PIPE FOUND
I.R.S.	IRON ROD SET
I.R.F.	IRON ROD FOUND
R.B.S.	REBAR SET
R.B.F.	REBAR FOUND
P.K.S.	P.K. NAIL SET
P.K.F.	P.K. NAIL FOUND
C.P.	COMPUTED POINT
R/R S.	RAILROAD SPIKE SET
R/R F.	RAILROAD SPIKE FOUND
CONC. S.	CONCRETE MONUMENT SET
CONC. F.	CONCRETE MONUMENT FOUND
L.W.S.	LIGHTWOOD STAKE FOUND

LINE TABLE

LINE	BEARING	DISTANCE
L1	S84°10'25"E	108.17'
L2	S24°49'35"W	100.00'
L3	S84°10'25"E	108.17'
L4	N25°49'35"E	100.00'
L5	S07°32'17"W	34.00'
L6	N74°52'03"E	34.00'
L7	S38°40'07"W	44.48'

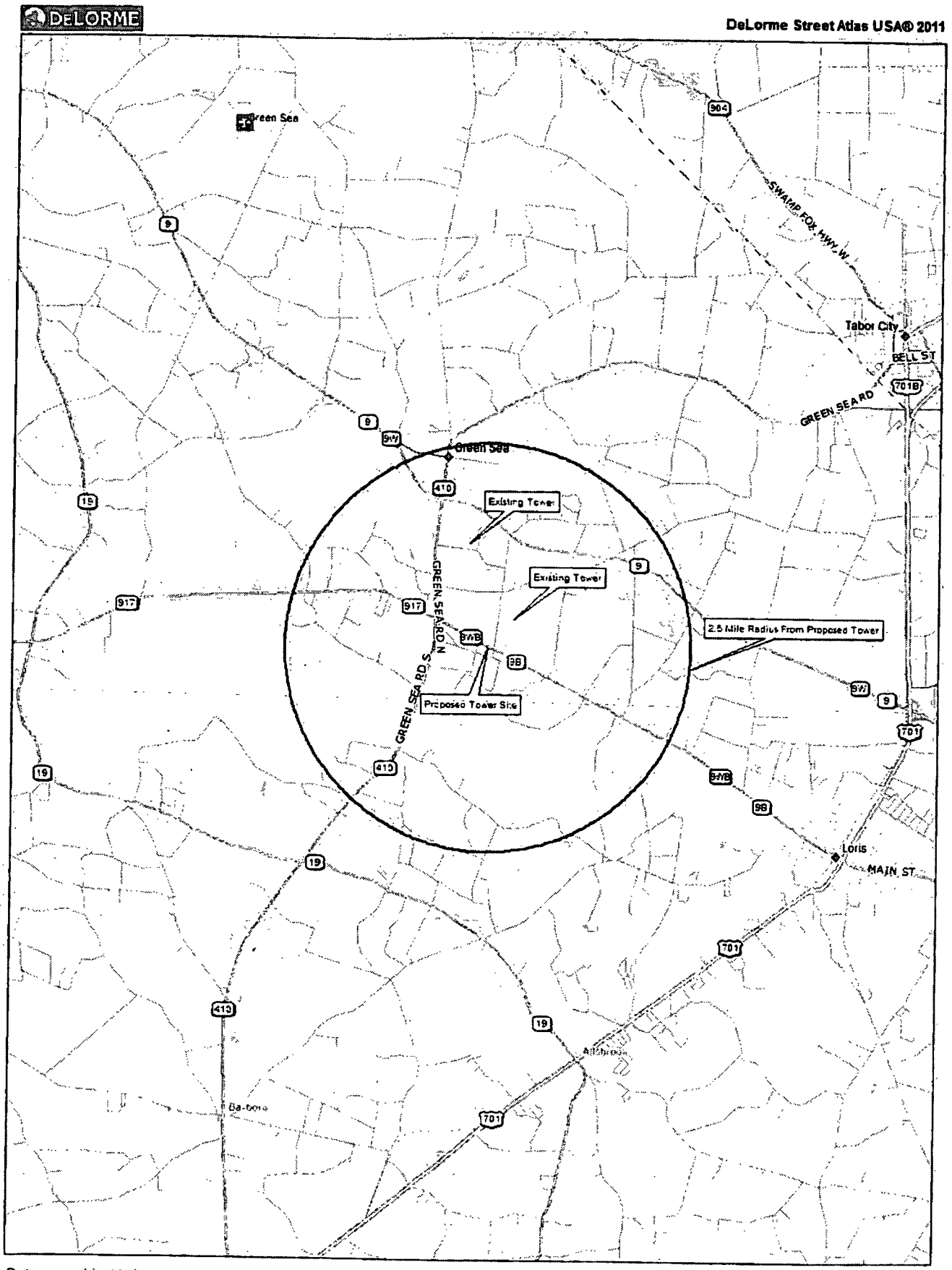
Timothy L. Davis, P.L.S.
Land Surveyor
843-358-1271

SOUTH CAROLINA LAND SURVEYOR PLS 27445 TIMOTHY L. DAVIS

NEAR FINKLEA
GREEN SEA TOWNSHIP
HORRY COUNTY
SOUTH CAROLINA
SCALE: 1" = 100'
DATE: OCTOBER 1, 2012
JOB # 123-A-12

GRAPHIC SCALE
100 0 50 100 200 400
(IN FEET)
1 inch = 100 ft.

BOUNDARY SURVEY OF 6.77 ACRES
OWNED BY
Angeline D. Johnson


DeLorme Street Atlas USA® 2011
Green Sea
904
SWAMP FOX HWY W
Tabor City
BELL ST
701B
GREEN SEA RD
9
9W
Green Sea
410
15
Existing Tower
Existing Tower
917
GREEN SEA RD N
GREEN SEA RD S
9WB
98
2.5 Mile Radius From Proposed Tower
Proposed Tower Site
9W
9
701
19
413
9WB
98
Loris
MAIN ST
701
19
413
19
Allsbrook
Bellamy
701
Data use subject to license
© DeLorme DeLorme Street Atlas USA® 2011
www.delorme.com
MN (8.5° W)
mi
0 ½ 1 1½ 2 2½
Data Zoom 11-0

ROA_0264

ASR Registration Search

Registration Search Results

Displayed Results

PA = Pending Application(s)

Specified Search

Latitude='**34-05-33.3 N**', Longitude='**78-57-59.4 W**', Radius=**4 Kilometers**

	Registration	Owner and Contact	Structure Description
1	Registration: 1045545 File Number: A0601942 Status: Constructed FAA Study: 2003-ASO-545-OE	Owner: American Towers, LLC. (678)265-6770 Contact: Team, Compliance (678)265-6770	Structure Type: TOWER Elevation of Site (meters): 26.8 Overall Height Above Ground (AGL) (meters): 89.9 Overall Height Above Sea Level (meters): 116.7 Located in: Loris, SC Lat/Long: 34-05-33.2N 078-57-59.3W FAA Chapters 4, 5, 6, 8, 13 Paint and Light in Accordance with FAA Circular Number 70/7460-1H
2	Registration: 1240462 File Number: A0576132 Status: Constructed FAA Study: 2003-ASO-4155-OE	Owner: SBA Towers Inc. (561)995-7670 Contact: Roach, Edward G (561)995-7670	Structure Type: TOWER Elevation of Site (meters): 26.2 Overall Height Above Ground (AGL) (meters): 93.8 Overall Height Above Sea Level (meters): 120.0 Located in: Loris, SC Lat/Long: 34-06-39.6N 078-58-14.9W FAA Chapters 4, 8, 12 Paint and Light in Accordance with FAA Circular Number 70/7460-1K
3	Registration: 1285147 File Number: A0779734 Status: Granted FAA Study: 2012-ASO-6748-OE	Owner: American Towers, LLC. (678)265-6770 Contact: (678)265-6770	Structure Type: LTOWER Elevation of Site (meters): 26.2 Overall Height Above Ground (AGL) (meters): 96.0 Overall Height Above Sea Level (meters): 122.2 Located in: LORIS, SC Lat/Long: 34-05-51.7N 078-57-39.2W FAA Chapters 12, 4, 8 Paint and Light in Accordance with FAA Circular Number 70/7460-1K

CLOSE WINDOW

A Communications Tower Replacement Application

Submitted to

Horry County, SC

By

TriStar Investors, Inc

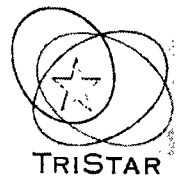
November 13, 2012 Council Meeting

Submitted October 12, 2012

TRISTAR

ROA_0267

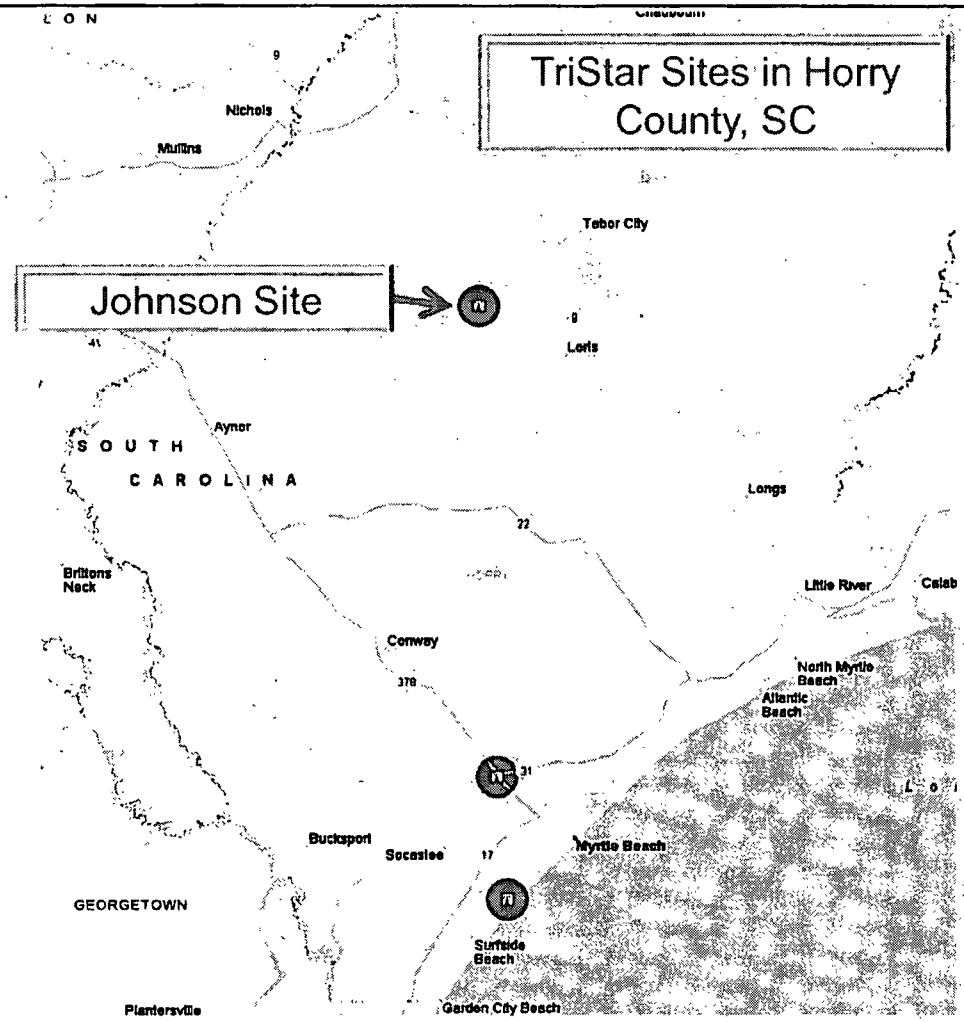
TriStar Investors Overview



- ★ TriStar Investors is a national tower site owner and developer
- ★ Principals of TriStar are wireless industry veterans who have been responsible for the design, development, operation and maintenance of tens of thousands of communications sites in the U.S. and around the world
- ★ TriStar has three sites in Horry County, South Carolina

ROA_0268

TriStar Investors Site Locations



ROA_0269

Johnson Site Proposed Communications Tower Replacement

TRISTAR

- ★ Communications site is located at 200 Huggins Rd. approximately ¾ of a mile southeast of Finklea
- ★ Original tower built on Angeline Johnson property in 1996 by Vanguard Cellular Systems of South Carolina
- ★ Tower was bought by American Tower in 2000
- ★ TriStar acquires an interest in the tower site parcel in 2010 in partnership with Mrs. Johnson
- ★ Ground lease for existing tower expires in 2015
- ★ Current wireless service providers utilizing the tower are Horry Telephone Cooperative, Verizon and T-Mobile

ROA_0270

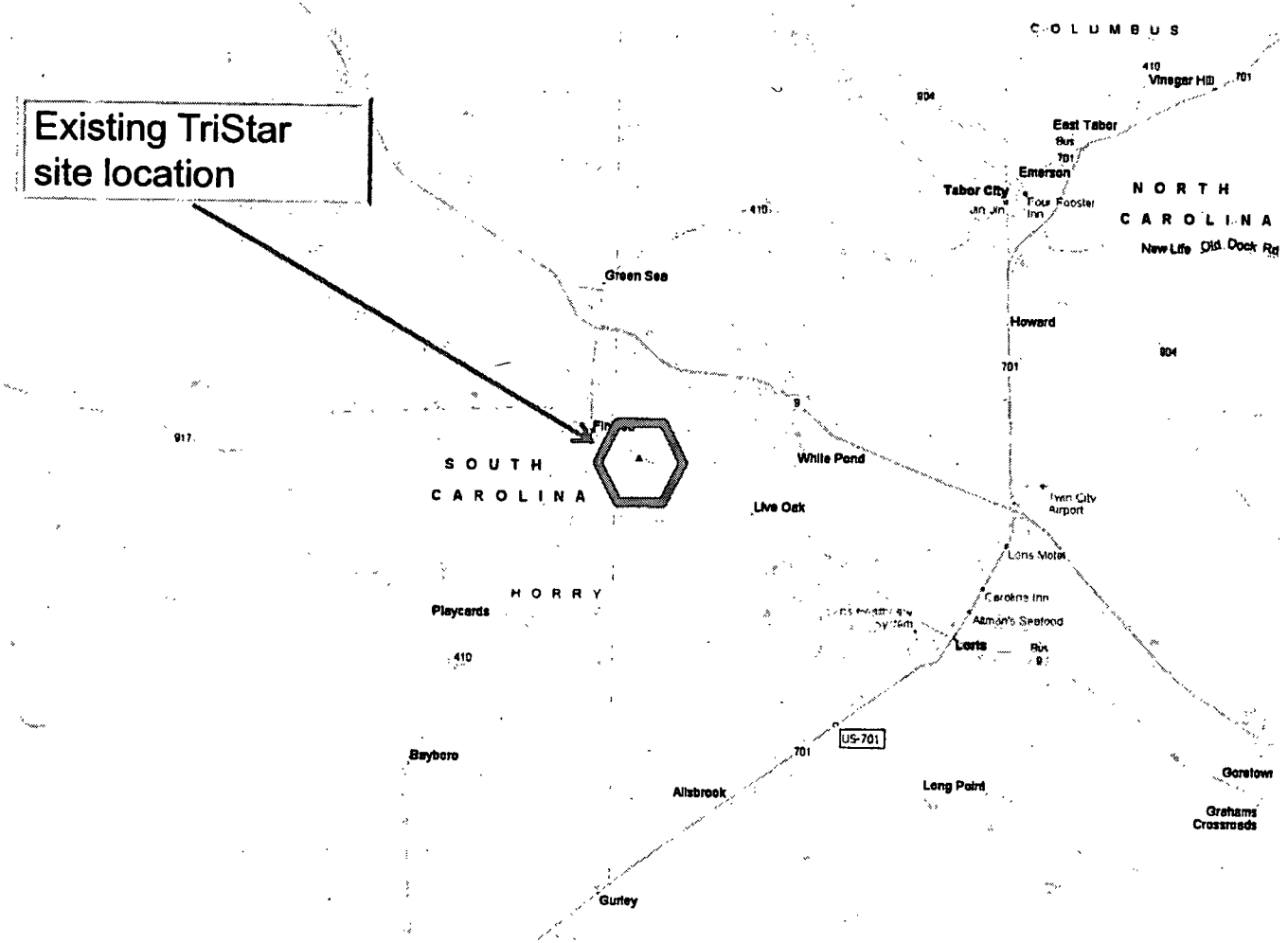
Johnson Site Proposed Communications Tower Replacement

TRISTAR

- ★ TriStar is proposing to construct a replacement tower on the same parcel immediately adjacent to the existing Johnson site (~50' away), move all carrier equipment to the new tower then deconstruct and remove the old tower (industry term is "drop and swap")
- ★ Replacement tower will be a self supporting lattice tower of exactly the same height (287') as the existing tower
- ★ For a period of up to 120 days, the two towers will both be standing while the "swap" is completed
- ★ TriStar is working diligently with the wireless service providers on the site to ensure no disruption to emergency 911 phone service during the transition

ROA_0271

Johnson Site Location Map



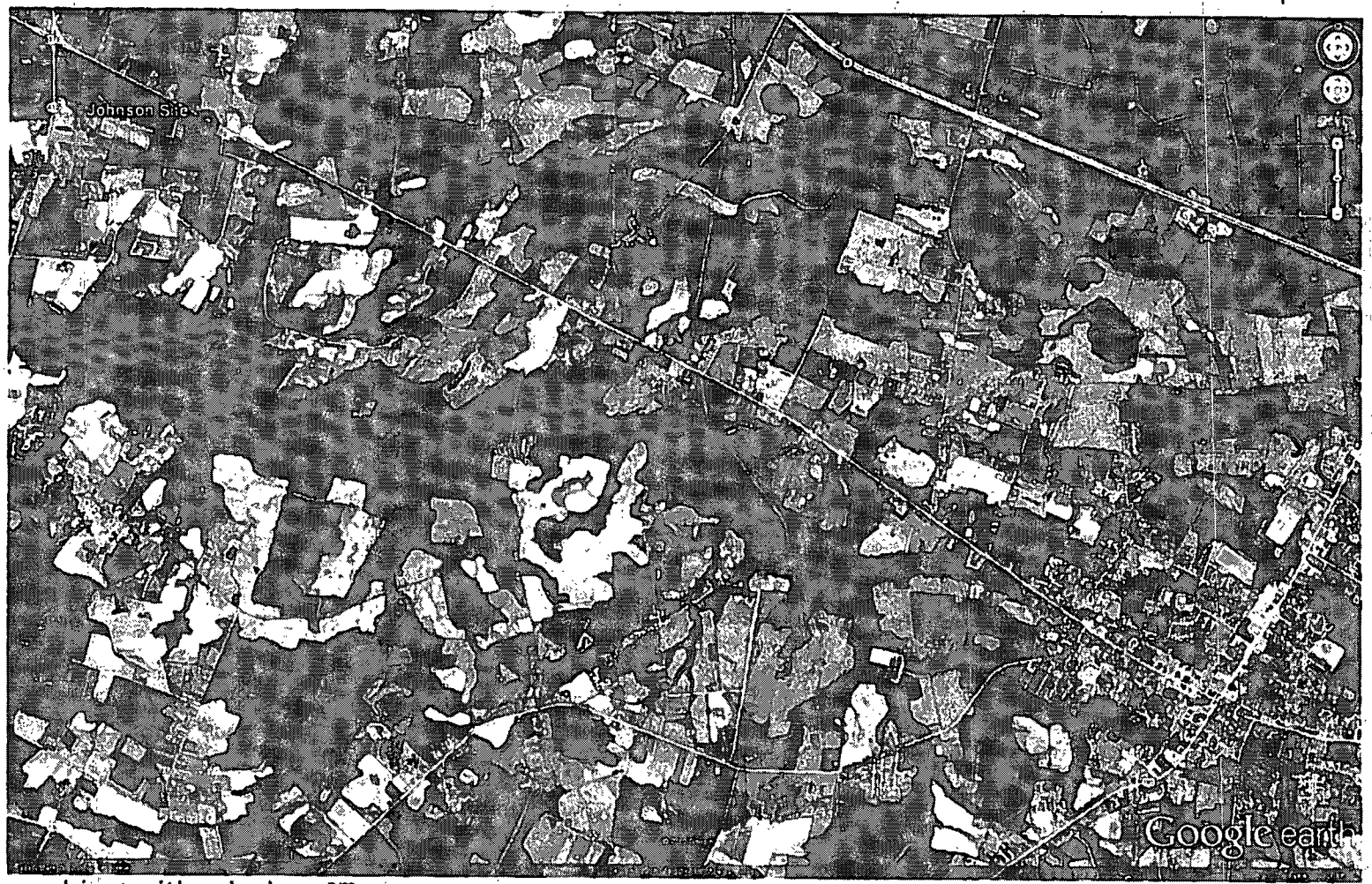
working with wireless[sm]

Strictly Confidential

ROA_0272

Johnson Site Location Map

TRISTAR



ROA_0273

Johnson Site Location Map

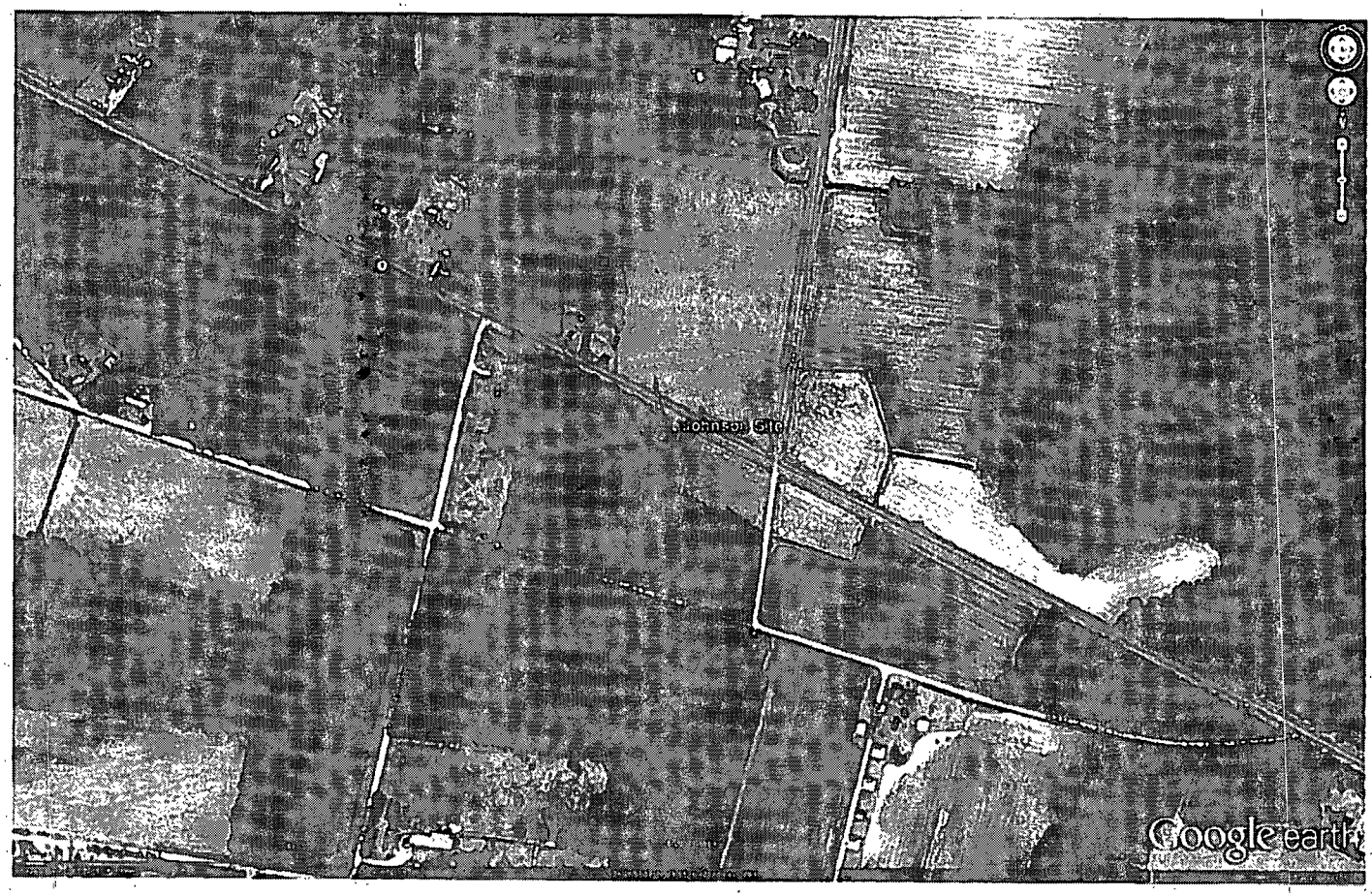
TRISTAR



ROA_0274

Johnson Site Location Map

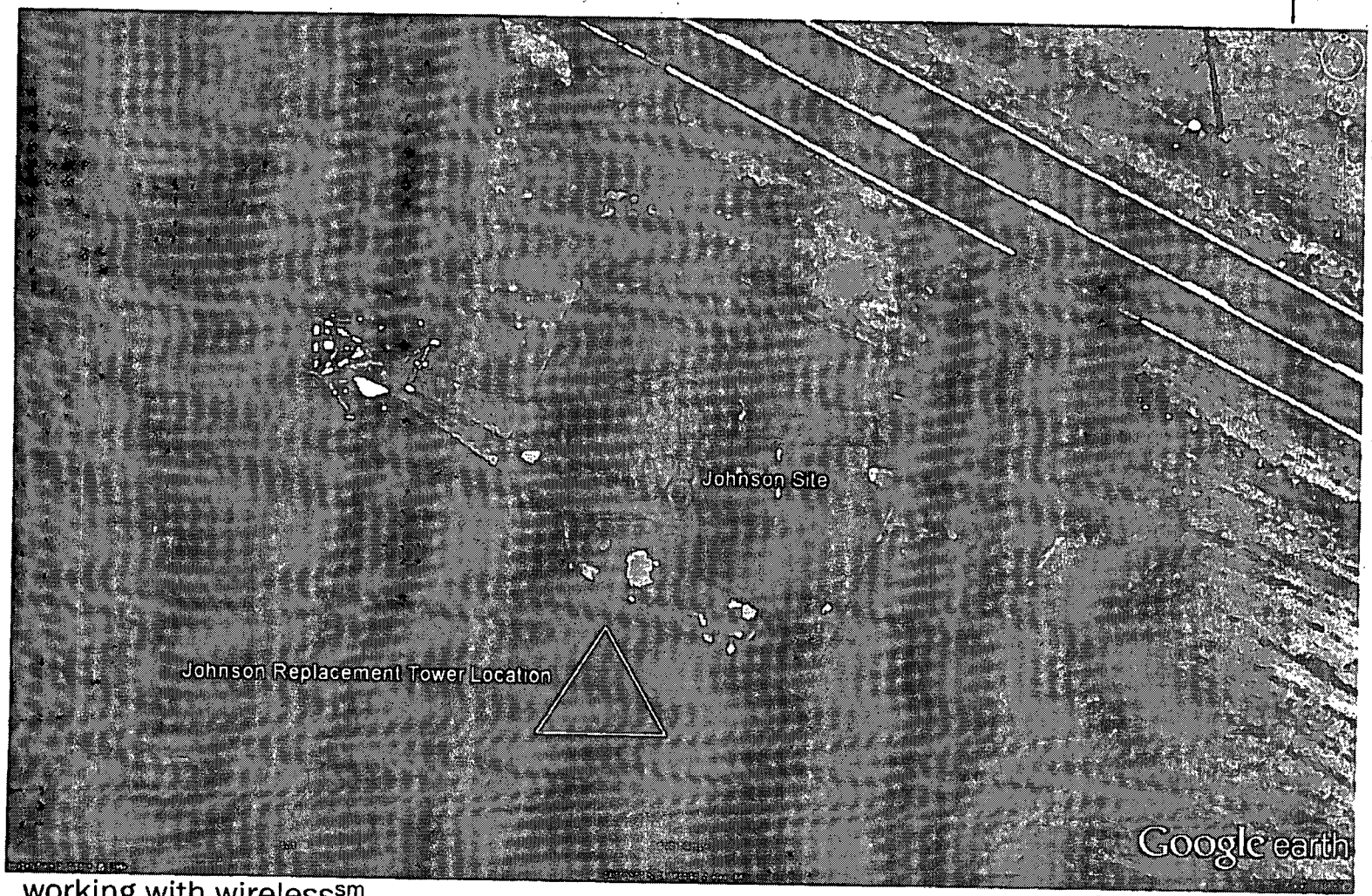
TRISTAR



ROA_0275

Johnson Site Replacement Tower Location

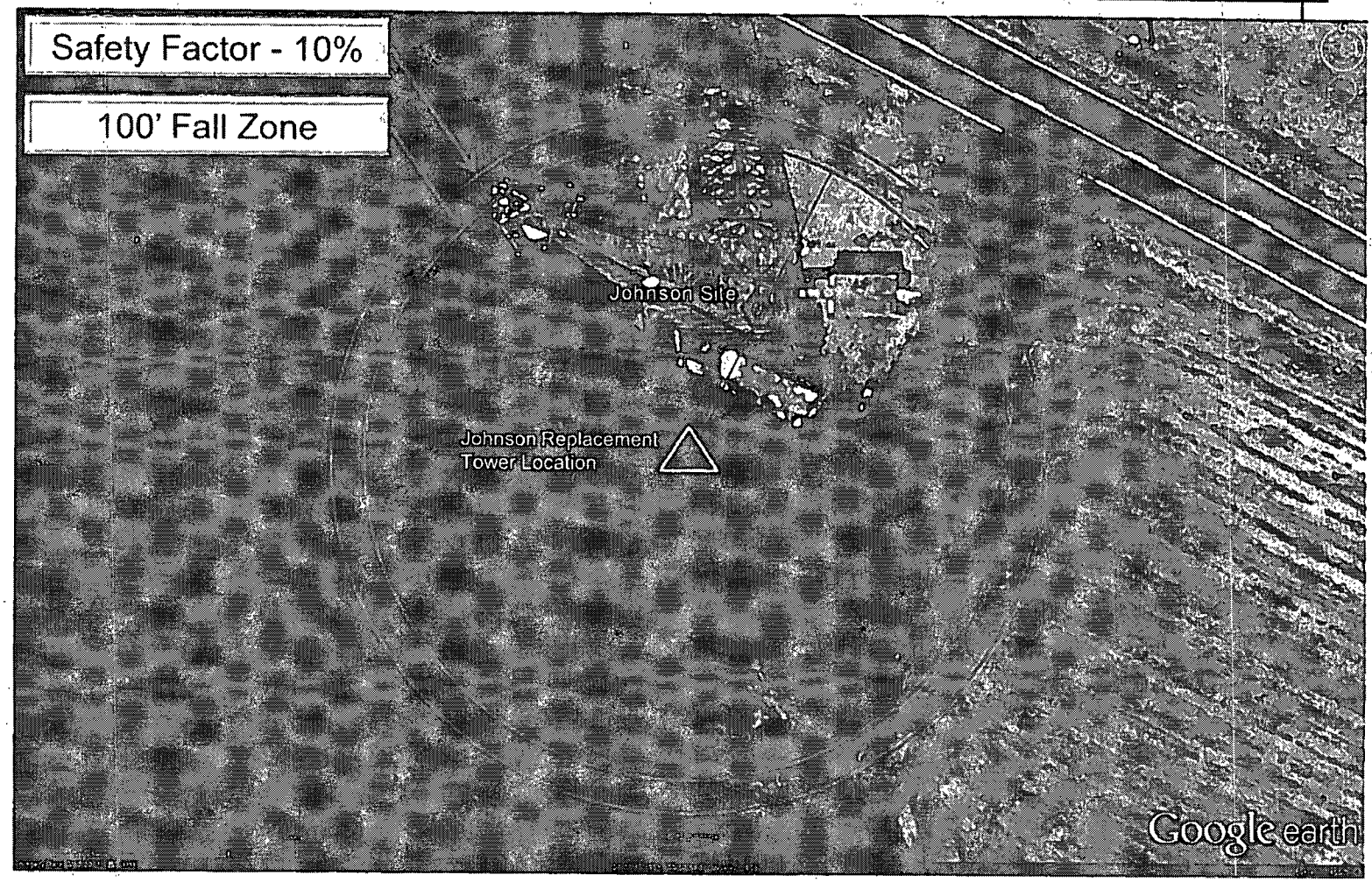
TRISTAR



ROA_0276

Johnson Site Replacement Tower 100' Fall Zone

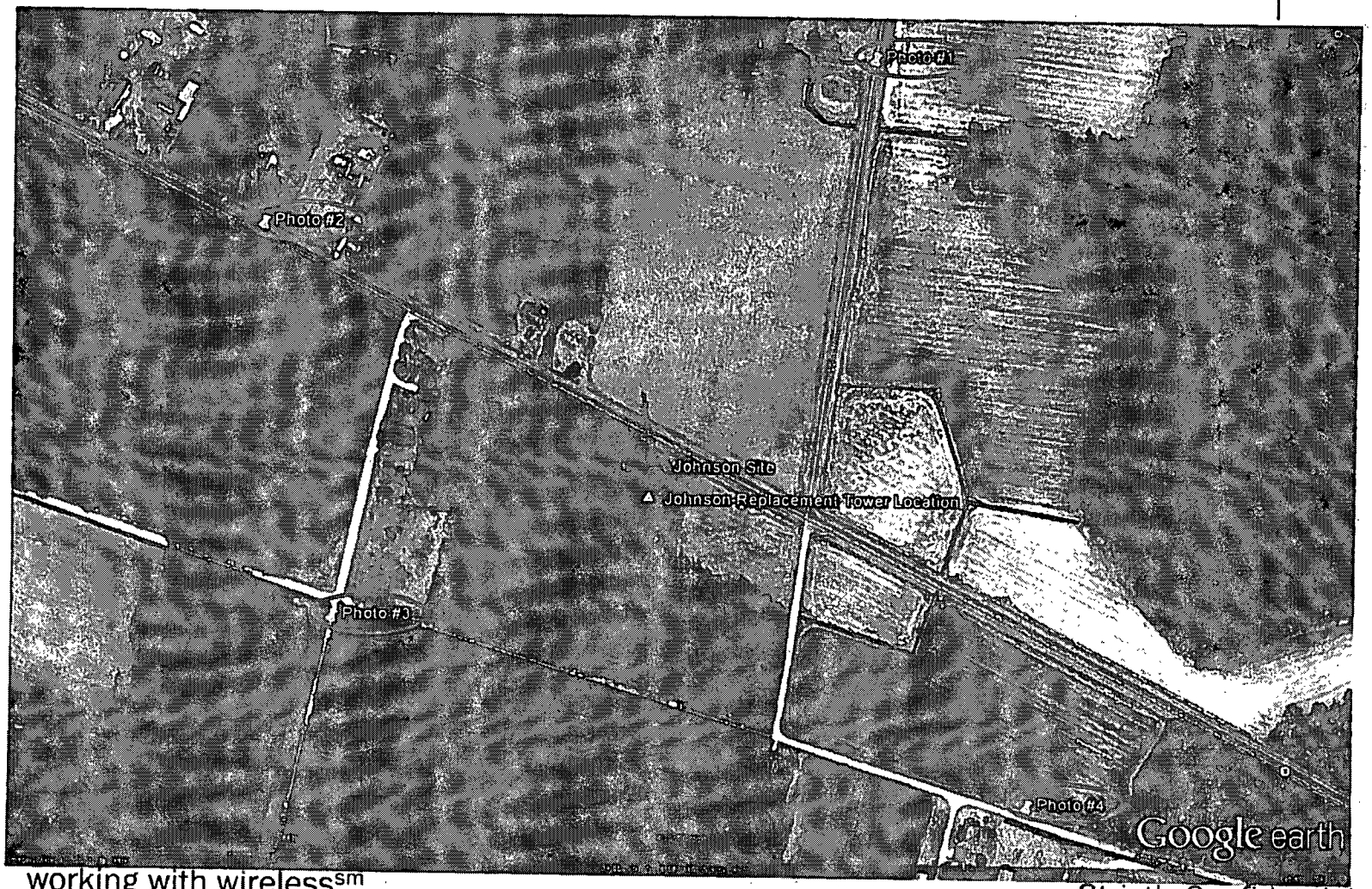
TRISTAR



ROA_0277

Viewshed Photos Of Johnson Site Location

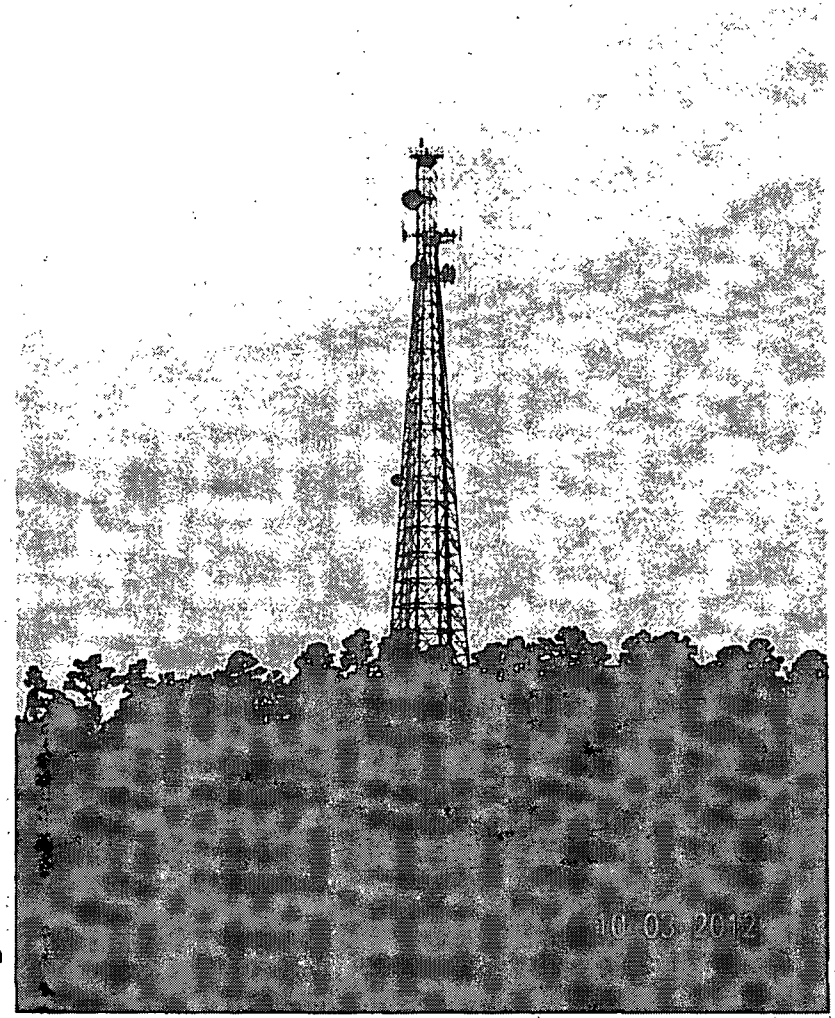
TRISTAR



ROA_0278

Viewshed Photo #1

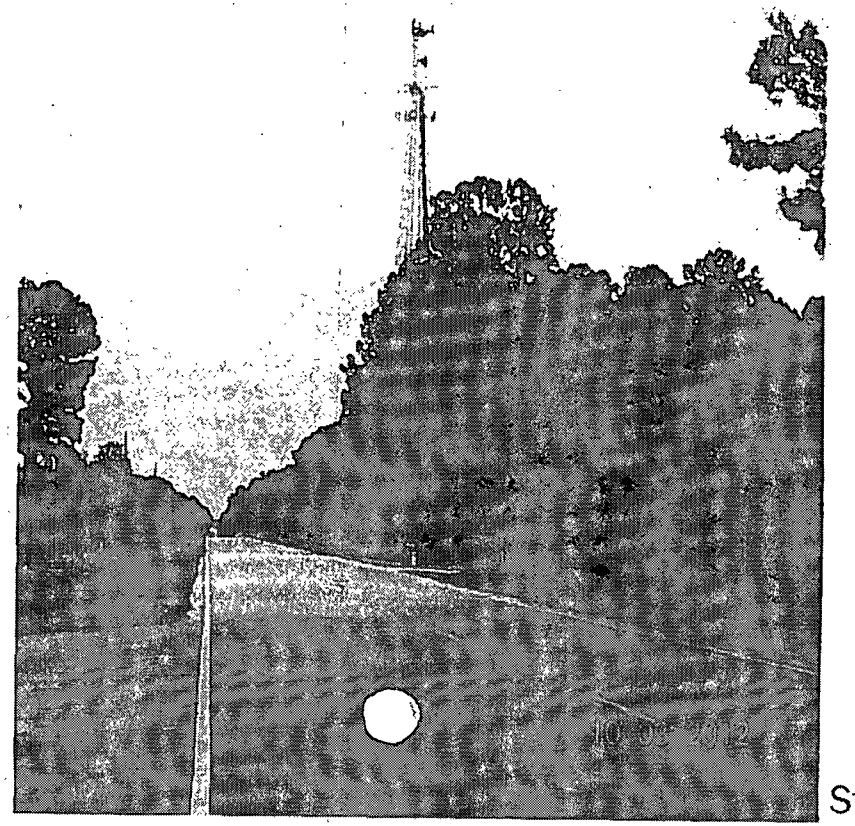
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ROA_0279

Viewshed Photo #2

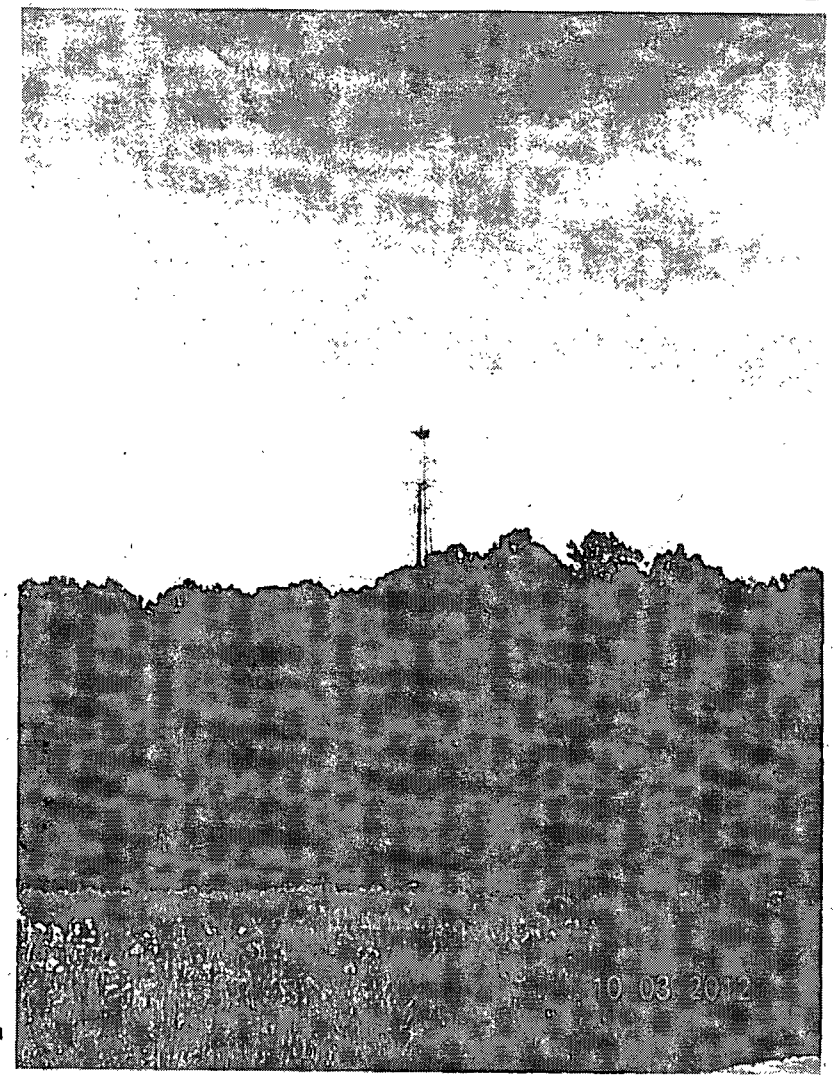
TRISTAR



ROA_0280

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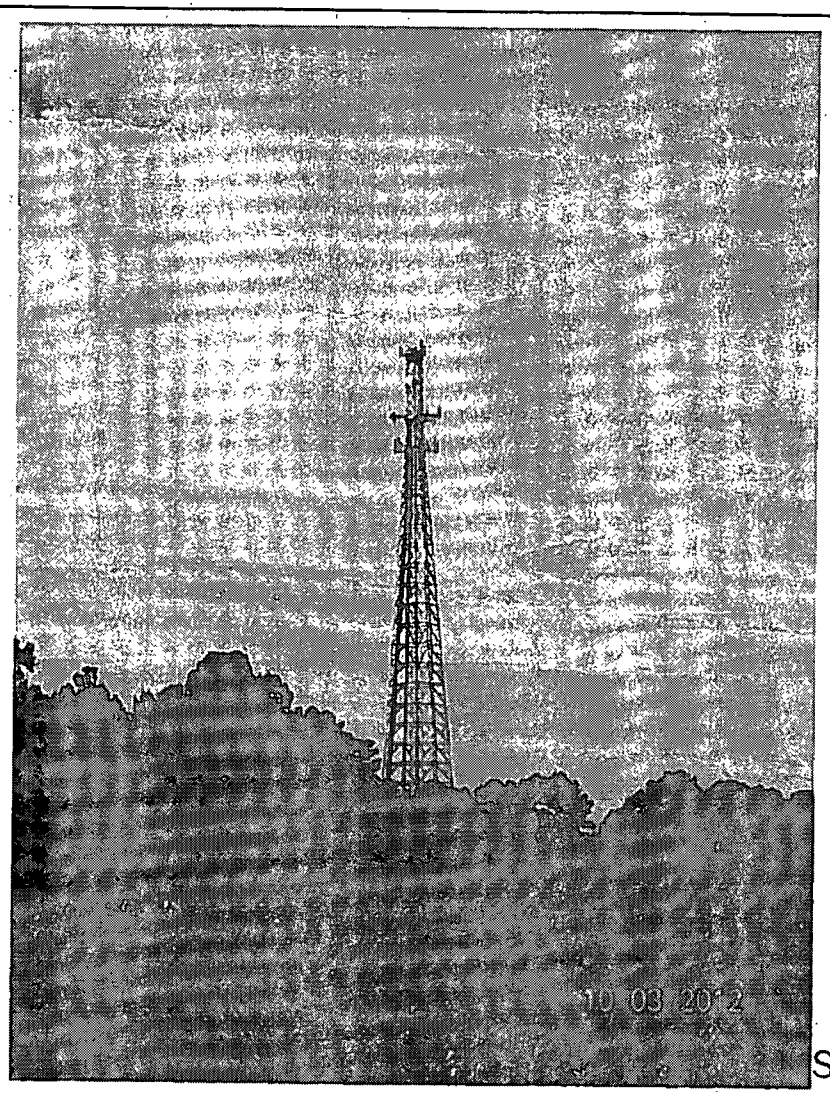
TRISTAR



ROA_0281

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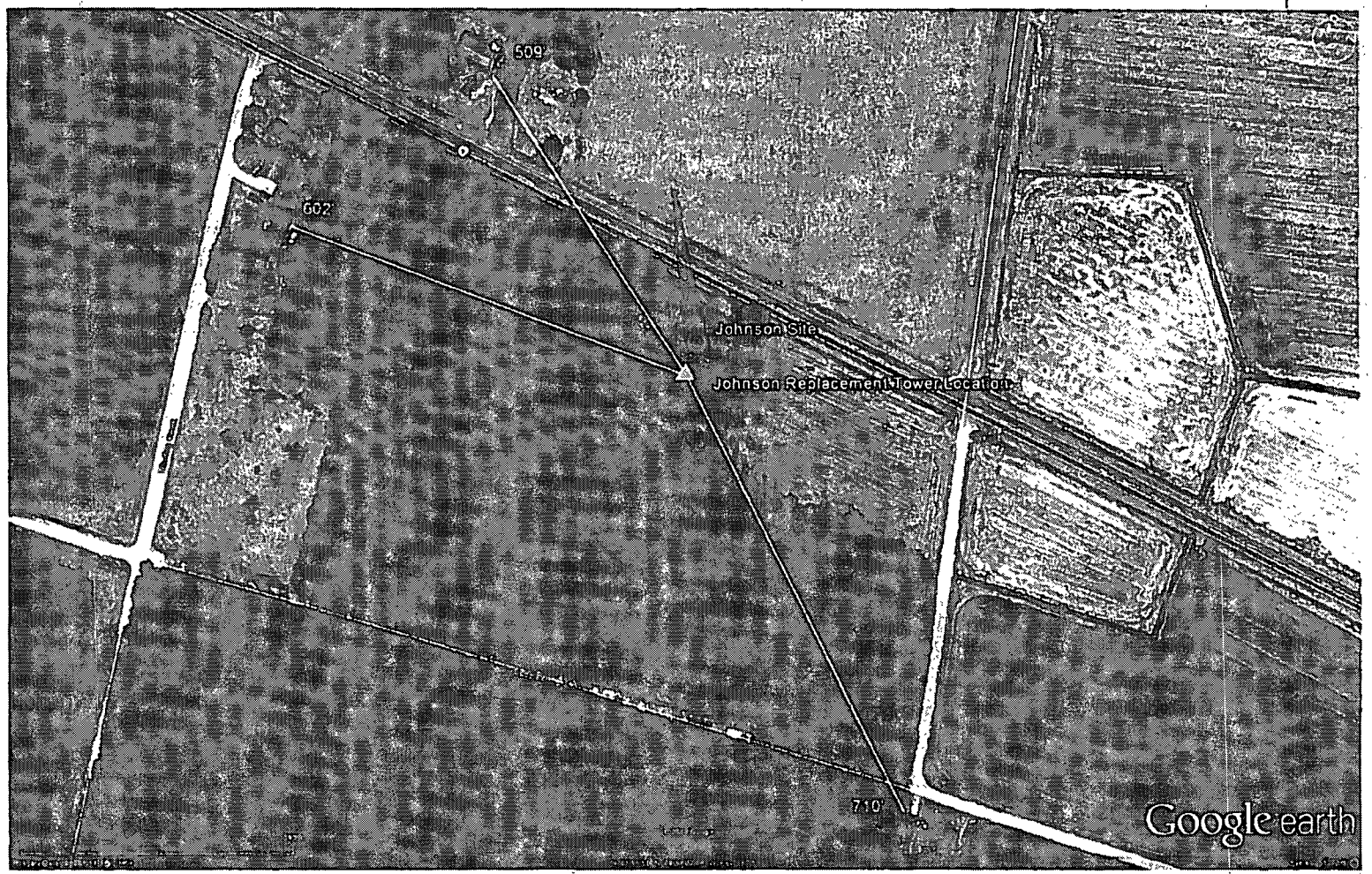
TRISTAR



ROA_0282

Distances To Nearby Improvements

TRISTAR

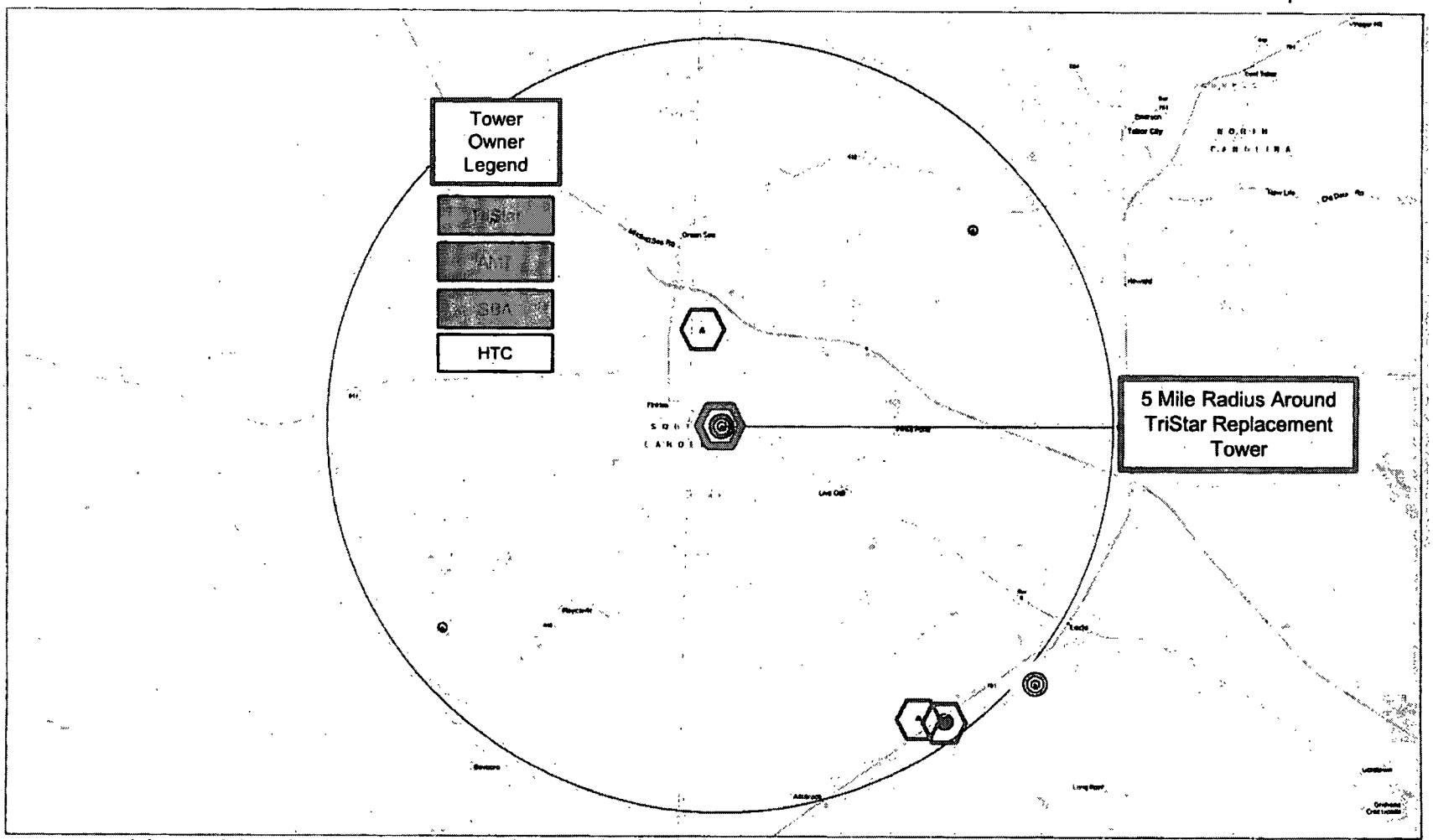


Imagery Date 8/29/2010 Google Earth

ROA_0283

Wireless Communications Facilities Map

TRISTAR

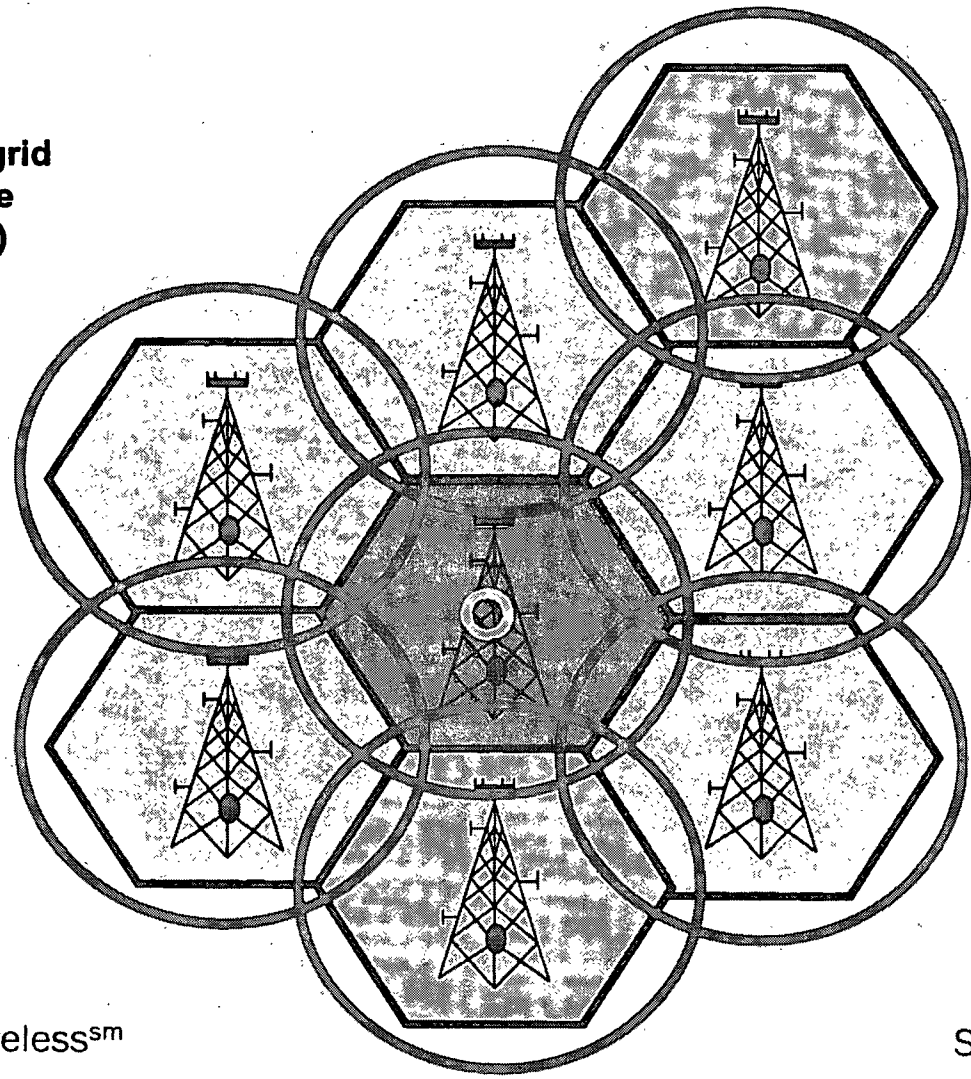


ROA_0284

How A Wireless Network Works

TRISTAR

Cell site "honeycomb" grid with coverage areas (in red)

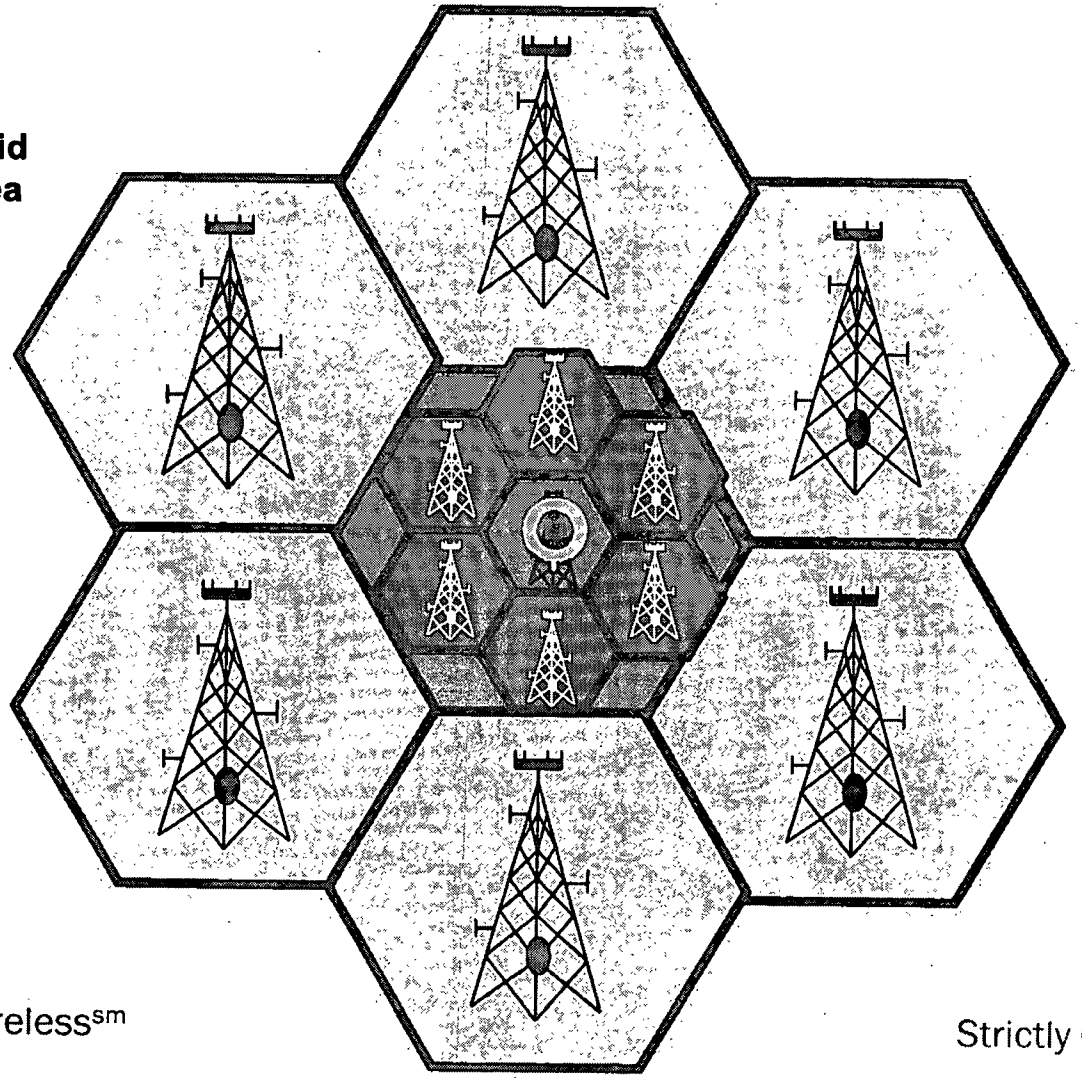


ROA_0285

How A Wireless Network Works

TRISTAR

Cell Site
"honeycomb" grid
with reduced area
"split" cells



ROA_0286

Strictly Confidential

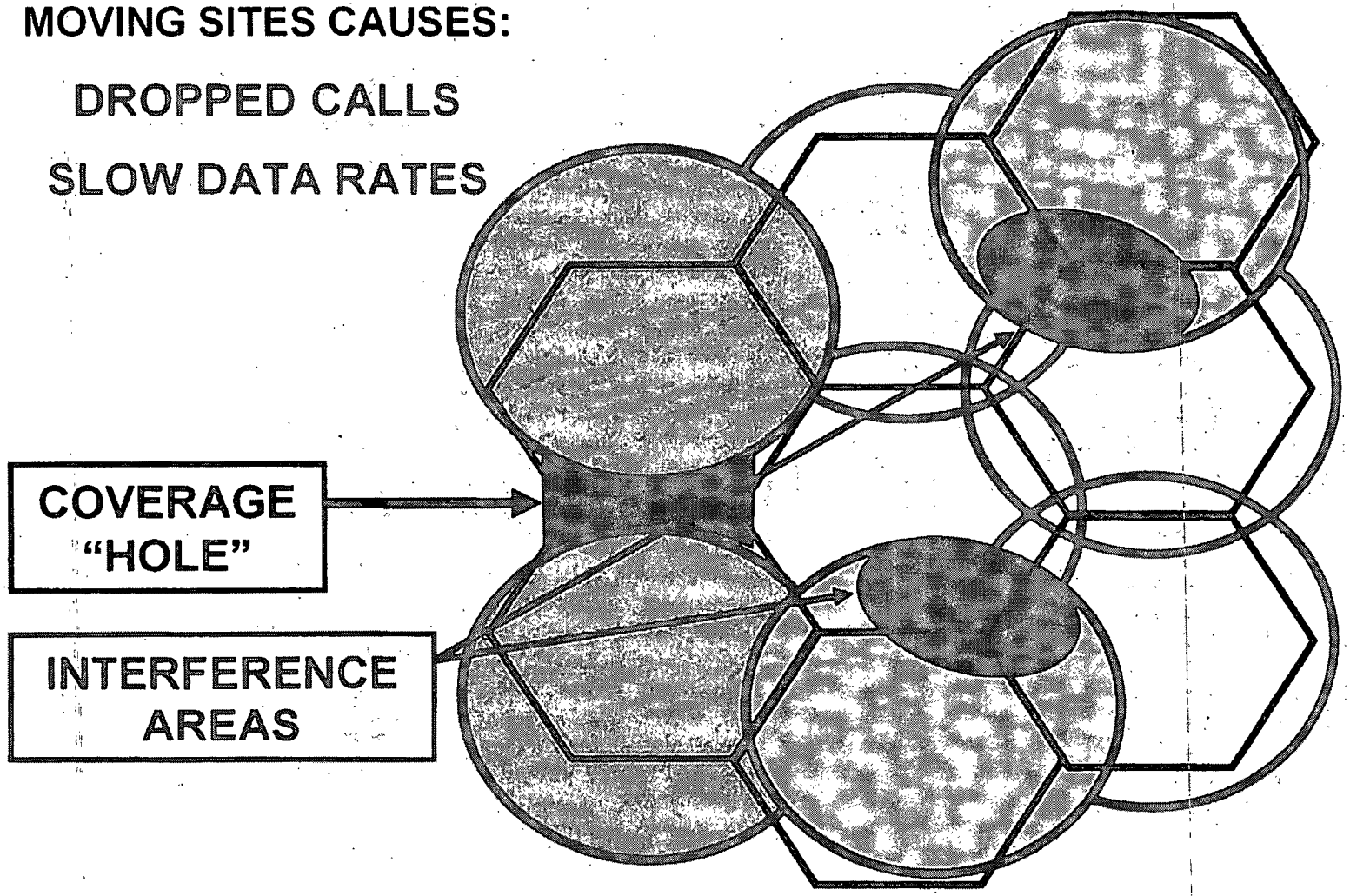
How A Wireless Network Works

TRISTAR

MOVING SITES CAUSES:

DROPPED CALLS

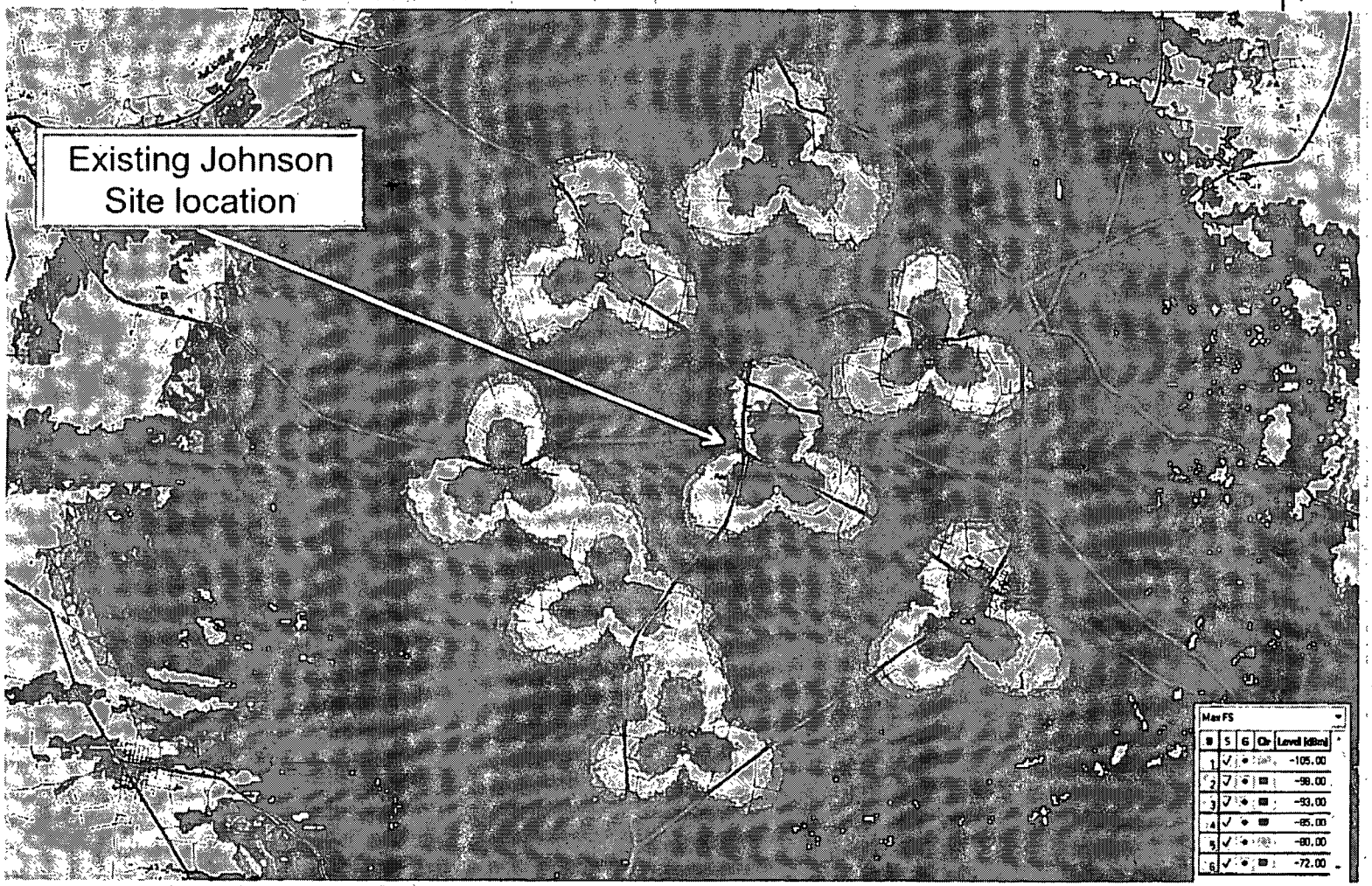
SLOW DATA RATES



ROA_0287

Existing RF Coverage

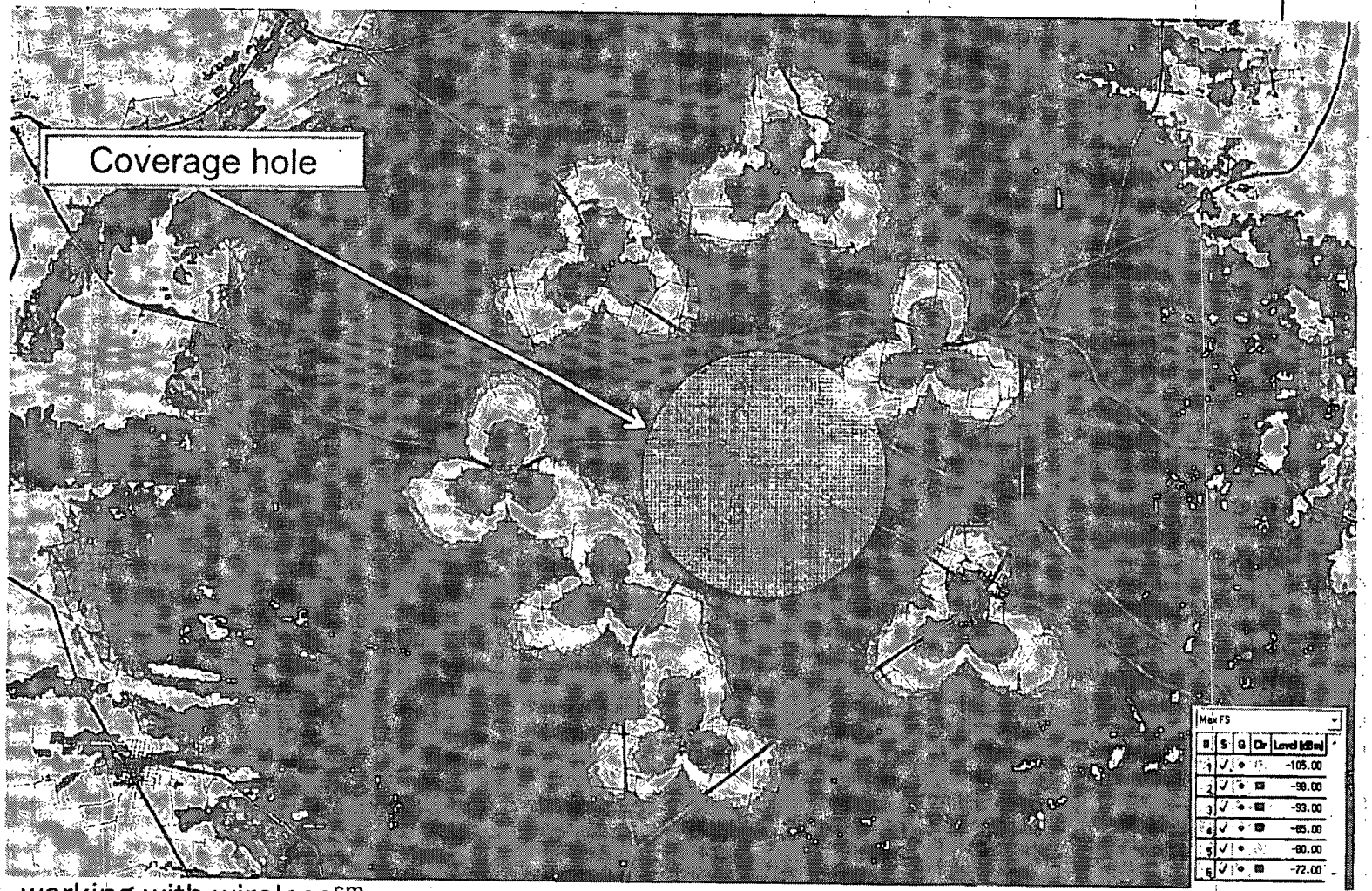
TRISTAR



ROA_0288

RF Coverage Impact Without Johnson Site

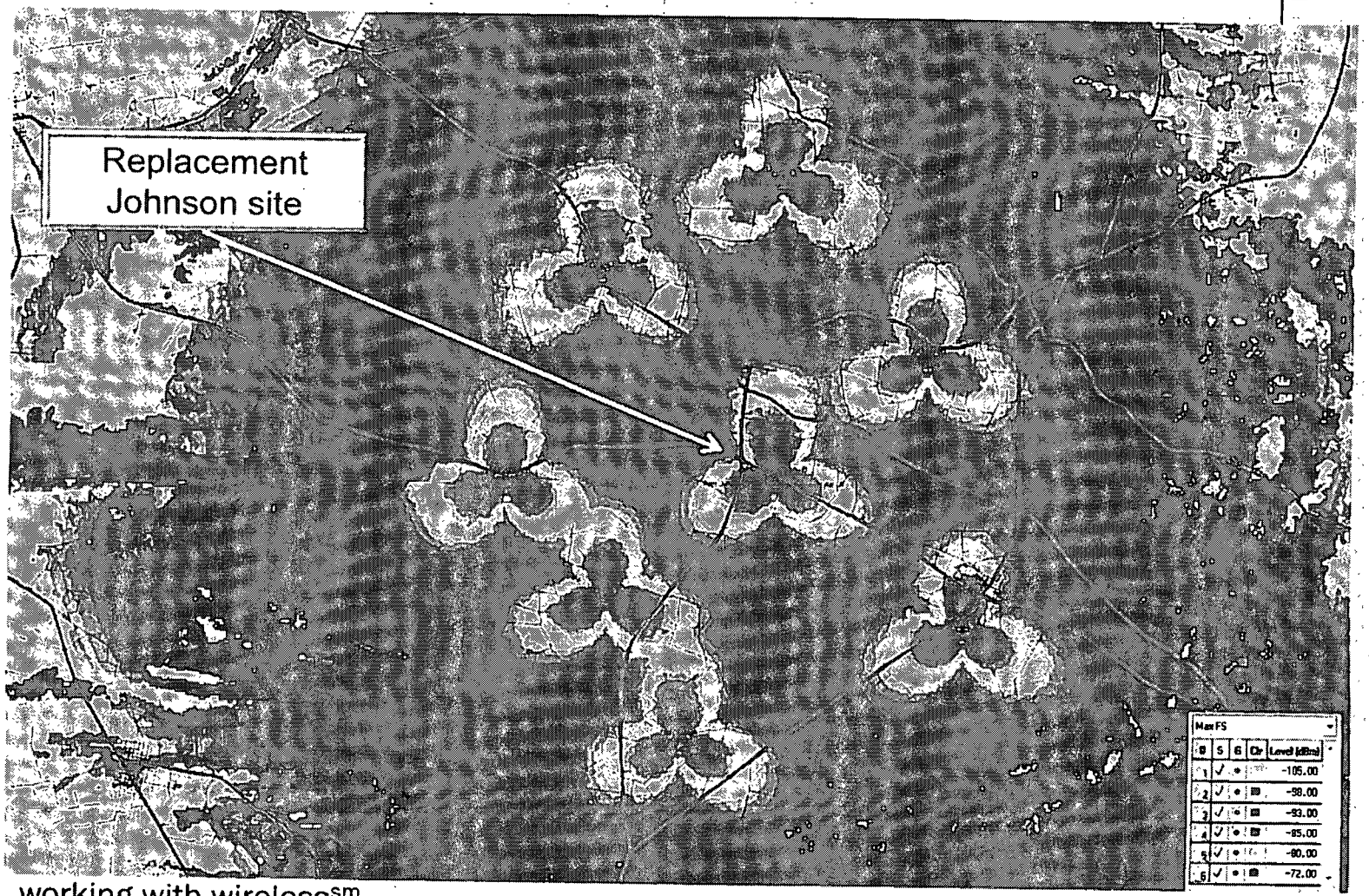
TRISTAR



ROA_0289

RF Coverage With Johnson Replacement Site

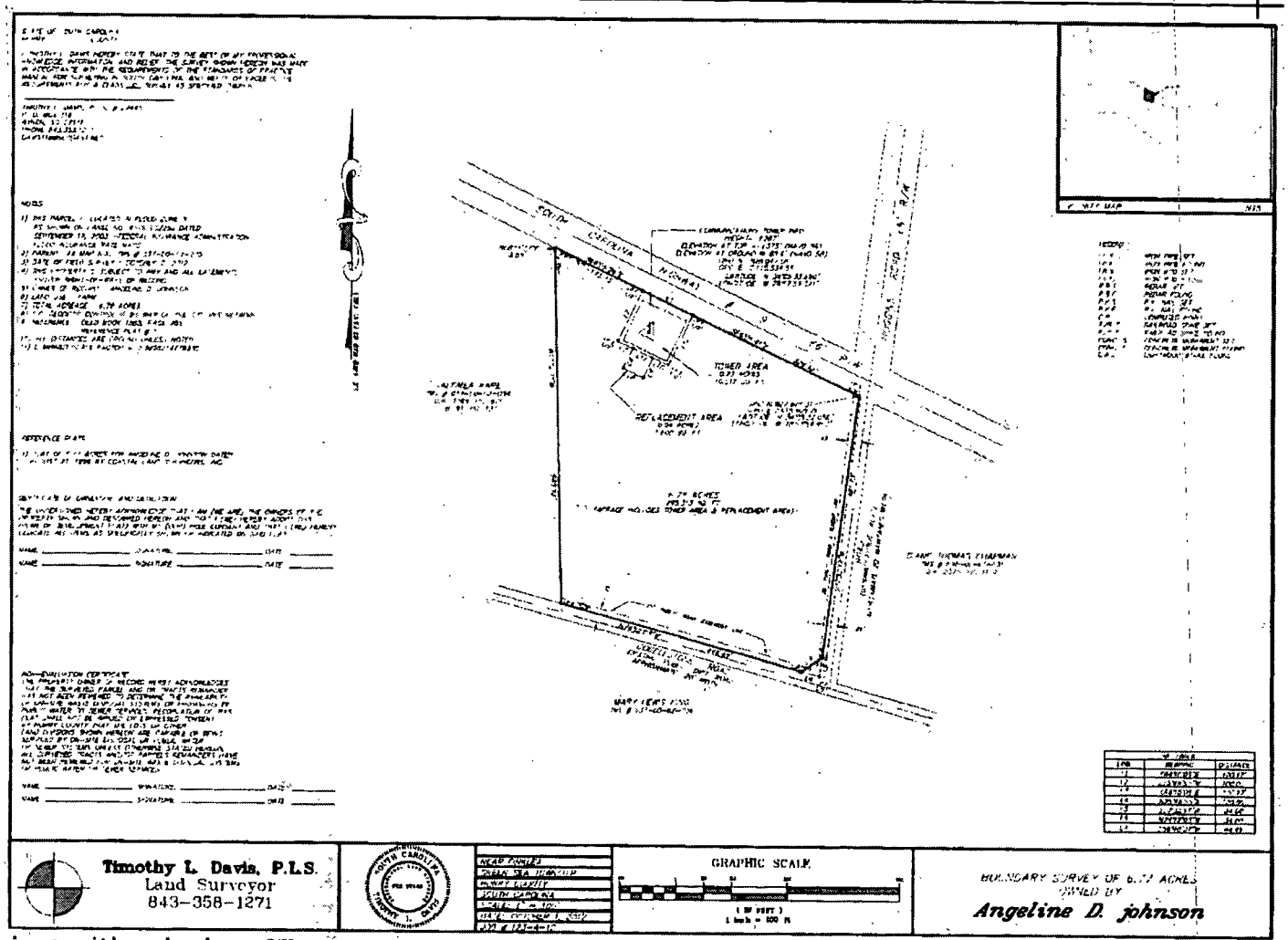
TRISTAR



ROA_0290

Johnson Replacement Site Plan

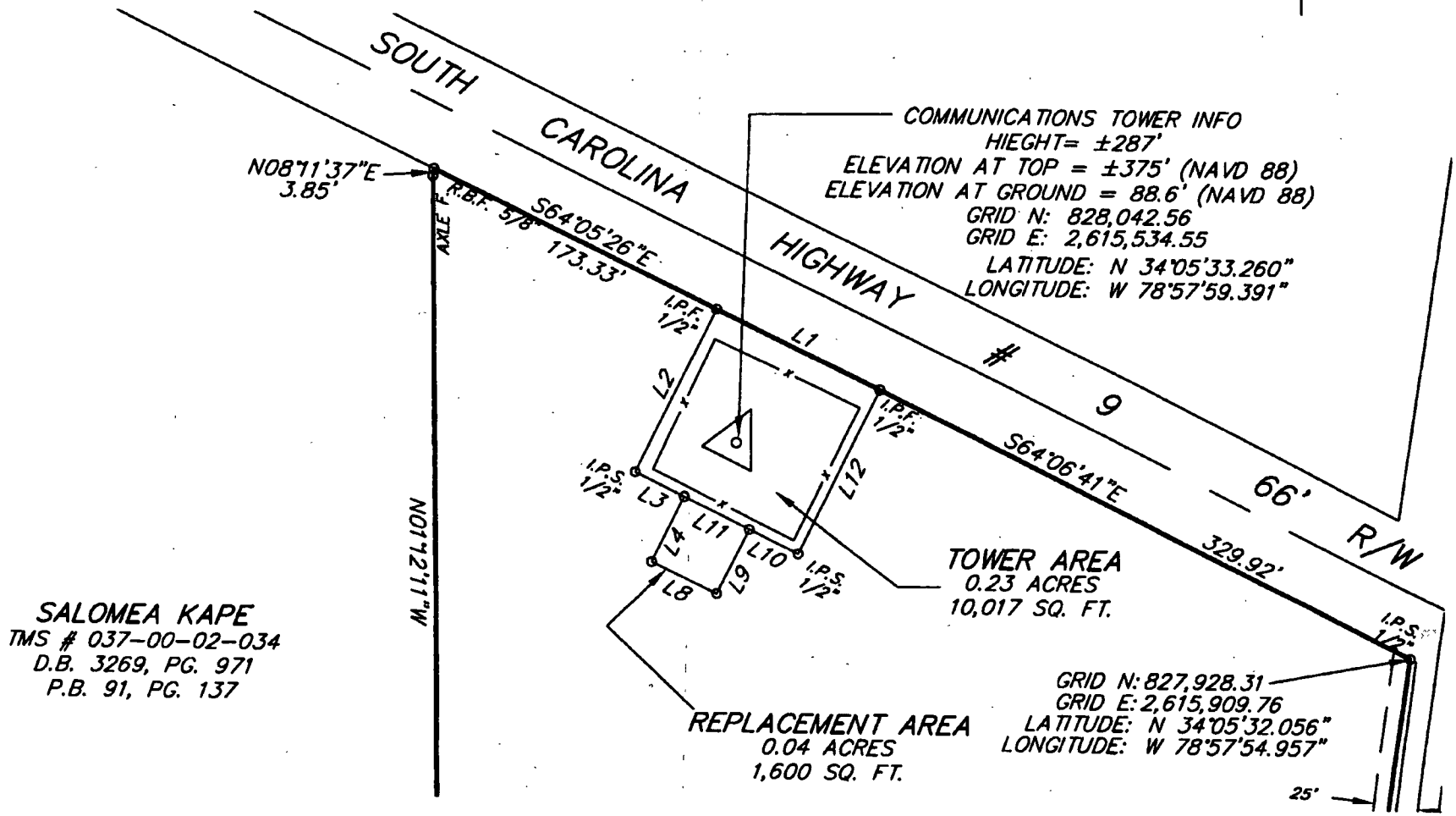
TRISTAR



ROA_0291

Proposed Tower ~50' From Existing Tower

TRISTAR



ROA_0292

Johnson Replacement Tower Specifications

TRISTAR

- ★ Replacement SST tower will be engineered to conform to the following design requirements:

1. Structural loading designed to latest TIA-222-Rev G Standard specifications
2. Additional carrier collocation loading designed into overall tower capacity
3. Break away leg design shall be specified to ensure the tower, in the unlikely event of a failure, will fall in a pre-planned zone designed to meet setback requirements and not fall off of the property or onto public roadways or adjacent parcels

ROA_0293

Johnson Replacement Tower Specifications

TRISTAR

TRISTAR

TRISTAR INVESTORS INC.
470 Streets Run Road Pittsburgh, PA 15116 412-882-4630

Self Support Tower Specifications
TriStar Site Number: 17588
Site Location: 200 Huggins Rd. Loris, SC 29569
Site Coordinates: 34.092567 N; -78.966497 W

Loading Requirements

Quote is for material and delivery only. Foundation design and installation of monopole, antennas, lines, mounts and foundation to be performed by others.

ITEM	DESCRIPTION	QUANTITY	NOTES
Structure Type	Guyed	1	Design to most current revision of TIA-222-G
Structure Height	Top of structure above base	287' (NOTE 1)	287' above final grade, actual structure height needs to account for height of foundation above final grade, assume base of structure is 1' above final grade
Design Load	Design for most stringent TIA-222-G conditions at this location		Use Highest environmental and operational load stress factors per TIA-222-G for this location (e.g. 3-Second Gust, ice, etc.)
Step Bolts			Provide typical step bolts
Safety Device		1	Provide typical safety climbing device
FAA Warning Lights		1	Standard daytime strobe, red night lights, include controller
Lightning Rod		1	Standard Height
Grounding			Grounding to be provided and installed by others, mounting brackets for ground bus bars at each antenna platform and microwave mount level should be provided with monopole.
Wave Guide Support	Standard cable ladder for each face to accommodate all cables		Design must accommodate mounting of all waveguide/coaxial lines
Antenna Mounts	Sector Frame Mounts for cellular/PCS antennas	3	Sector frame mounts at each of the 3 specified cellular/PCS antenna levels. Microwave mounts to be supplied by others.
Coax Entrances	Not Applicable		
Coax Exits	Not Applicable		
Engineering Drawings	Stamped and Signed by TX P.E.	1	Provide detailed drawings, specifications and load calculations needed for foundation design and building permit application.
Shipping	Shipping Costs		Cost to be quoted for delivery to the site. Site access guaranteed for typical tractor trailer. Offload by others

Antenna Information

Frequency	ACL Elevation (Above Base)	Quantity	Manufacturer	Model Number	Line Size	Line Qty.	TTA's
700/800/1900/2500 MHz	287	15	Andrew/Commscope	TBXLHB-6565A-VTM	1-5/8"	18	18
700/800/1900/2500 MHz	287	12	Ericsson	RRUS 11 / 17" x 17.8" x 9.2"/ 54 lbs	1-1/4"	3	
700/800/1900/2500 MHz	287	3	Ericsson	RRUS A2 Module/ 15" x 12.8" x 3.4"/ 21.16 lbs			
700/800/1900/2500 MHz	287	3	RFS	IBC1900HG-1 combiner/ 16.3"x8.7"x2.6"/ 22 lbs			
700/800/1900/2500 MHz	287	9	RFS	ACU-A20-N RET/ 4" x 2" x 3.5" / 1.04 lbs			
11 GHz	264	1	Andrew/Commscope	UHX8-107	EW180	1	0
700/800/1900/2500 MHz	257	15	Andrew/Commscope	TBXLHB-6565A-VTM	1-5/8"	18	18
700/800/1900/2500 MHz	257	12	Ericsson	RRUS 11 / 17" x 17.8" x 9.2"/ 54 lbs	1-1/4"	3	
700/800/1900/2500 MHz	257	3	Ericsson	RRUS A2 Module/ 15" x 12.8" x 3.4"/ 21.16 lbs			
700/800/1900/2500 MHz	257	3	RFS	IBC1900HG-1 combiner/ 16.3"x8.7"x2.6"/ 22 lbs			
700/800/1900/2500 MHz	257	9	RFS	ACU-A20-N RET/ 4" x 2" x 3.5" / 1.04 lbs			
700/800/1900/2500 MHz	234	12	RFS	APX75-866515-CT0	1-5/8"	24	24
700/800/1900/2500 MHz	234	12	Ericsson	RRUS 11 / 17" x 17.8" x 9.2"/ 54 lbs	1-1/4"	3	
700/800/1900/2500 MHz	234	3	Ericsson	RRUS A2 Module/ 15" x 12.8" x 3.4"/ 21.16 lbs			
700/800/1900/2500 MHz	234	3	RFS	IBC1900HG-1 combiner/ 16.3"x8.7"x2.6"/ 22 lbs			
700/800/1900/2500 MHz	234	9	RFS	ACU-A20-N RET/ 4" x 2" x 3.5" / 1.04 lbs			
700/800/1900/2500 MHz	214	12	RFS	APX75-866515-CT0	1-1/4"	24	24
700/800/1900/2500 MHz	214	12	Ericsson	RRUS 11 / 17" x 17.8" x 9.2"/ 54 lbs	1-1/4"	3	
700/800/1900/2500 MHz	214	3	Ericsson	RRUS A2 Module/ 15" x 12.8" x 3.4"/ 21.16 lbs			
700/800/1900/2500 MHz	214	3	RFS	IBC1900HG-1 combiner/ 16.3"x8.7"x2.6"/ 22 lbs			
700/800/1900/2500 MHz	214	9	RFS	ACU-A20-N RET/ 4" x 2" x 3.5" / 1.04 lbs			
6GHz	187	1	Andrew/Commscope	UHX6-59_L	EW180	1	0
11 GHz	170	2	Andrew/Commscope	UHX8-107-D3A	EW180	1	0
18 GHz	160	1	Andrew/Commscope	VHLPX8-18_A	EW180	1	0
6 GHz	151	1	Andrew/Commscope	HPX4-59	EW180	1	0

NOTE 1: Foundation and tower should be designed for a final height above base of 287'. Tower requires breakaway legs in order to meet zoning fall zone requirement of 100' or less. Center of base of tower sits 118' from road requiring a setback of 118' plus 10% hence the fall zone requirement of 100'.

ROA_0294

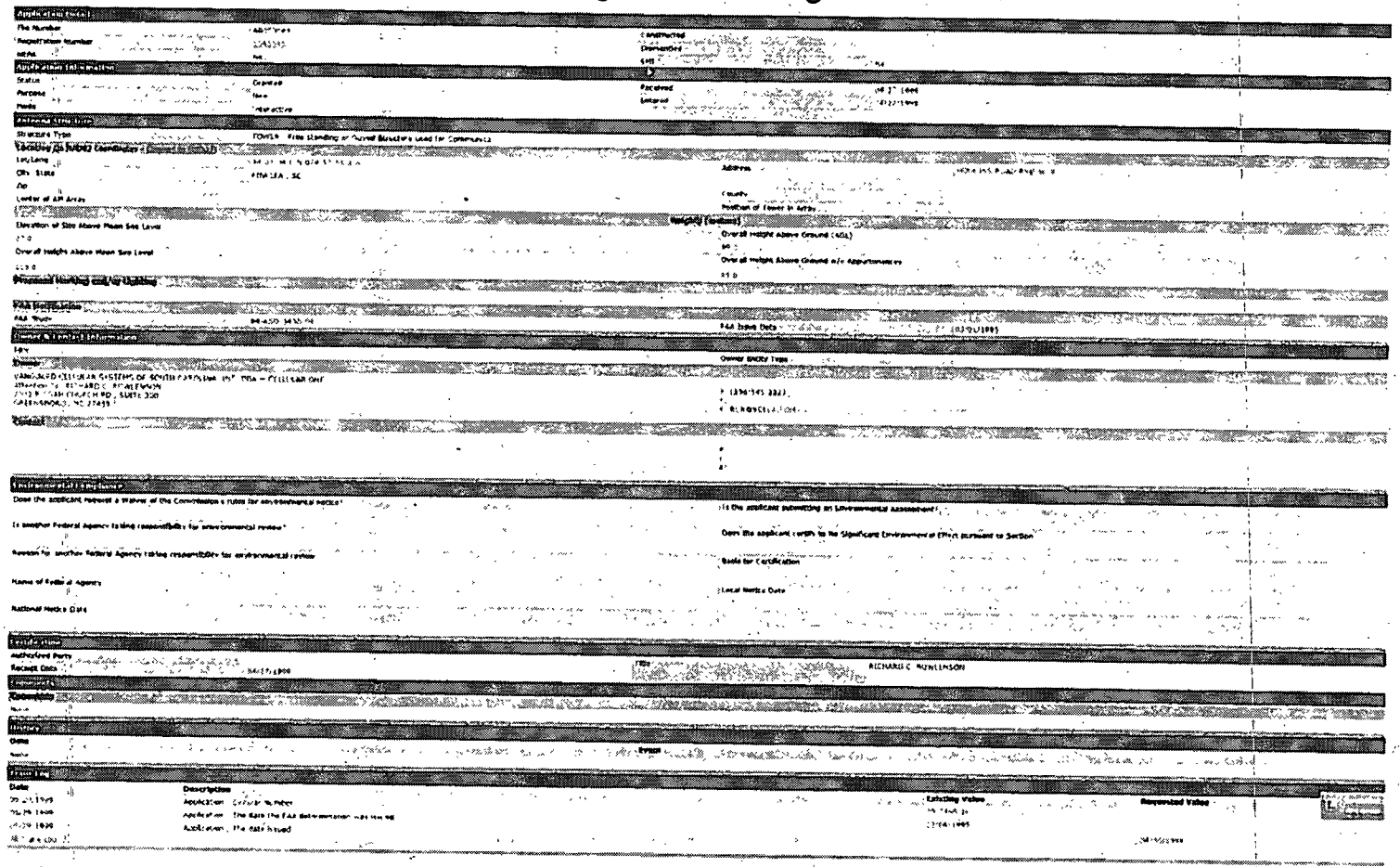
working with wireless[sm]

Strictly Confidential

FAA and FCC Regulatory Compliance

TRISTAR

- Tower was built in 1996
- Original FCC Registration for this location was granted to Vanguard Cellular



ROA_0295

FAA and FCC Regulatory Compliance

TRISTAR

1994/2003 FAA Form 7460-1 For the TriStar Tower Location

Overview

Study (ASN):	2003-ASO-545-OE
Prior Study:	1994-ASO-3430-OE
Status:	Determined
Letters:	Determination

Supplemental Form 7460-2: Please login to add a Supplemental Form 7460-2.

Received Date:	02/05/2003
Entered Date:	02/06/2003
Completion Date:	03/14/2003
Expiration Date:	

Sponsor Information

Sponsor:	AMERICAN TOWER
Attention Of:	REGULATORY DEPARTMENT
Address:	116 HUNTINGTON AVENUE
Address2:	
City:	BOSTON
State:	MA
Postal Code:	02116
Country:	US
Phone:	(617)585-7600
Fax:	(617)375-7550

Sponsor's Representative Information

Representative:	
Attention Of:	
Address:	
Address2:	
City:	
State:	
Postal Code:	
Country:	
Phone:	
Fax:	

Construction Info

Notice Of:	CONSTR
Duration:	PERM (Months: 0 Days: 0)
Work Schedule:	
Date Built:	

Structure Summary

Structure Type:	Antenna Tower
Structure Name:	SC 085552
FCC Number:	1045545 FCC ASR Registration

Structure Details

Latitude (NAD 83):	34° 05' 33.24" N
Longitude (NAD 83):	78° 57' 59.39" W
Horizontal Datum:	NAD 83
Survey Accuracy:	2C
Marking/Lighting:	Dual-red and medium intensity
Other Description:	
Name:	
City:	LORIS
State:	SC
Nearest Airport:	5J9
Distance to Structure:	31433.12 feet
On Airport:	No
Direction to Structure:	272.44°
Description of Location:	
Description of Proposal:	EXISTING TOWER-CORRECTS CORDS, HEIGHTS FROM 381'AMSL AND ADDS FREQUENCIES

Height and Elevation

	Proposed	DNE	DET
Site Elevation:	88		
Structure Height:	295	0	295
Total Height (AMSL):	383	88	383

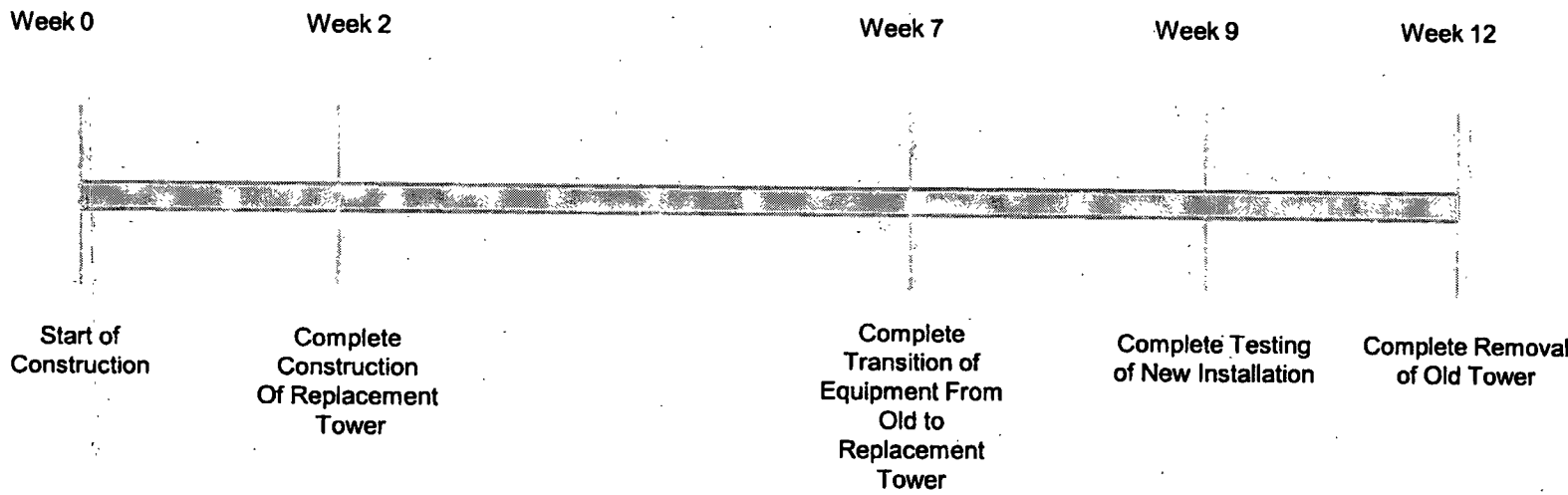
Frequencies

Low Freq	High Freq	Unit	ERP	Unit
806	849	MHz	0.5	kW
851	866	MHz	0.5	kW
869	894	MHz	0.5	kW
896	901	MHz	0.5	kW
1850	1910	MHz	0.8	kW
1930	1990	MHz	0.8	kW

ROA_0296

Johnson Replacement Tower
Drop and Swap Project Timeline

TRISTAR



ROA_0297

Federal Aviation Administration
Southern Regional Office
1701 Columbia Avenue-ASO-520
College Park, GA 30337

AERONAUTICAL STUDY NO.
2003-ASO-545-OE
PRIOR STUDY NO.
1994-ASO-3430-OE

Issued Date: 3/14/2003

REGULATORY DEPARTMENT
AMERICAN TOWER
116 HUNTINGTON AVENUE
BOSTON, MA 02116

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has completed an aeronautical study under the provisions of 49 U.S.C., Section 44718 and, if applicable, Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure Type:	Antenna Tower
Location:	LORIS, SC
Latitude:	34-5-33.24 NAD83
Longitude:	78-57-59.39
Heights:	295 feet above ground level (AGL)
	383 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

As a condition to this Determination, the structure should continue to be marked and/or lighted utilizing a med-dual system.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

A copy of this determination will be forwarded to the Federal Communications Commission if the structure is subject to their licensing authority.

This aeronautical study included evaluation of a 295 foot AGL structure that exists at this time. Action will be taken to ensure aeronautical charts are updated to reflect this existing height and the most current coordinates/elevation as indicated in the above description.

SC085552

If we can be of further assistance, please contact our office at (404)305-5614. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2003-ASO-545-OE.

(DNE)

Richard E. Biscomb
Specialist

cc: NACO w/map 41-1169
/SURVEY

Frequency Data for ASN 2003-ASO-545-OE

LOW FREQUENCY	HIGH FREQUENCY	FREQUENCY UNIT	ERP	ERP UNIT
806	849	MHz	.5	KW
851	866	MHz	.5	KW
869	894	MHz	.5	KW
896	901	MHz	.5	KW
1850	1910	MHz	.8	KW
1930	1990	MHz	.8	KW

Frequency Attachment (DNE)

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
ANTENNA STRUCTURE REGISTRATION

Owner: American Tower through ATC South LLC

FCC Registration Number (FRN): 0008273849

American Tower through ATC South LLC 116 Huntington Ave Boston, MA 02116	Antenna Structure Registration Number: 1045545
	Issue Date: 04-08-2003
Location of Antenna Structure: HUGGINS ROAD AND SC-9 (085552) Loris, SC	Ground Elevation (AMSL): 26.8 meters
	Overall Height Above Ground (AGL): 89.9 meters
Latitude: 34-5-33.2N Longitude: 78-57-59.3W NAD83	Overall Height Above Mean Sea Level (AMSL): 116.7 meters

Painting and Lighting Requirements:

FAA Chapters 4, 5, 6, 8, 13
Paint and Light in Accordance with FAA Circular Number 70/7460-1H

Special Conditions:

This registration is effective upon completion of the described antenna structure and notification to the Commission. **YOU MUST NOTIFY THE COMMISSION WITHIN 24 HOURS OF COMPLETION OF CONSTRUCTION OR CANCELLATION OF YOUR PROJECT, please file FCC Form 854.** To file electronically, connect to the antenna structure registration system by pointing your web browser to http://wireless.fcc.gov/antenna. Electronic filing is recommended. You may also file manually by submitting a paper copy of FCC Form 854. Use purpose code "NT" for notification of completion of construction; use purpose code "CA" to cancel your registration.

The Antenna Structure Registration is not an authorization to construct radio facilities or transmit radio signals. It is necessary that all radio equipment on this structure be covered by a valid FCC license or construction permit.

You must immediately *provide* a copy of this Registration to all tenant licensees and permittees sited on the structure described on this Registration (although not required, you may want to use Certified Mail to obtain proof of receipt), and *display* your Registration Number at the site. See reverse for important information about the Commission's Antenna Structure Registration rules.

20
FCC 854R
July 2002

ms13

DRILLED PIER FOUNDATION SUMMARY

Tristar Investors
Loris, SC

U- 32.0 287
P- 200796-01

v 8.0

Pier Dimensions

Pier diameter, d_s:	6.50	ft
Depth, D:	89.0	ft
Ext. above grade, E:	0.50	ft
Bell diameter, b_d:	none	ft
Volume, V_c:	85.42	cy (per leg)

Reinforcement Design

Rebar	$m_{_c}$:	32	verticals
	size, $s_{_c}$:	11	equally spaced in 6" cage
Ties	size, $s_{_t}$:	5	w/ overlaps
	spacing:	18.00	" OC

Anchor Bolts

P/N:	125135	115" long, 2" diameter

Soil Information Per:

Assumed as dense sand

Site Parameters

Ultimate Bearing, B_c:	8.000	ksf
Ultimate Pp:	0.373	kcf
Ult. Skin Friction, SF:	1.228	ksf
Seismic Zone:	1	
Depth neglected, N:	5.00	ft
Neglect bottom, N_b:	none	ft

Additional Notes:

* No foundation modifications listed.
* No foundation notes given.

Material Properties

Steel tensile str, F_y:	60000	psi
Conc. Comp. str, F'_c:	4000	psi
Conc. Density, δ:	150.0	pcf
Clear cover, cc:	3.00	in

Backfill Compaction

Lift thickness:	8	in
Compaction:	95	%
Standard Proctor:	ASTM	D698

Tower design conforms to the following:

* *1997 Uniform Building Code (UBC)*
* *2000 & 2003 International Building Code (IBC)*
* *ANSI TIA-222-G*
* *Building Code Requirements for Reinforced Concrete (ACI 318-05)*

Foundation Loading

Load Case 1

Load Case 2 stress ratio: 89.3% mark up: 0.7%

Shear/Leg, S:	157.00 kips	x 1.007 =	158.10 kips
Moment/Leg, M:	0.00 ft-kips	x 1.007 =	0.00 ft-kips
Compression/Leg, C:	1466.00 kips	x 1.007 =	1476.26 kips
Uplift/Leg, U:	1315.00 kips	x 1.007 =	1324.21 kips

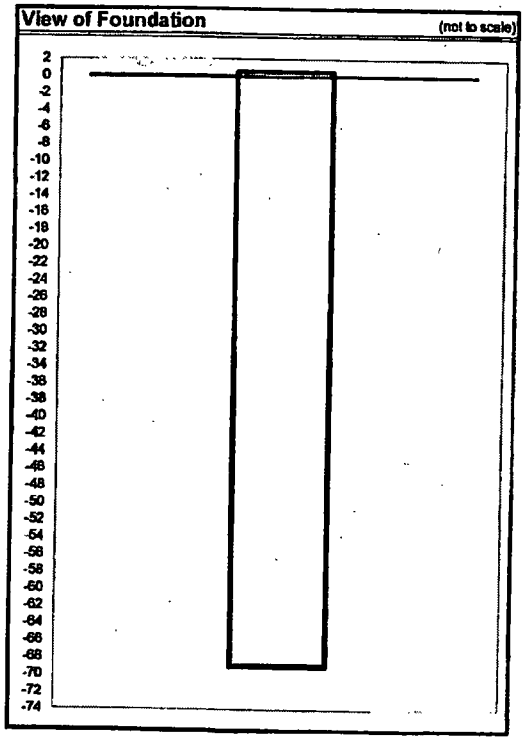
Load Case 3

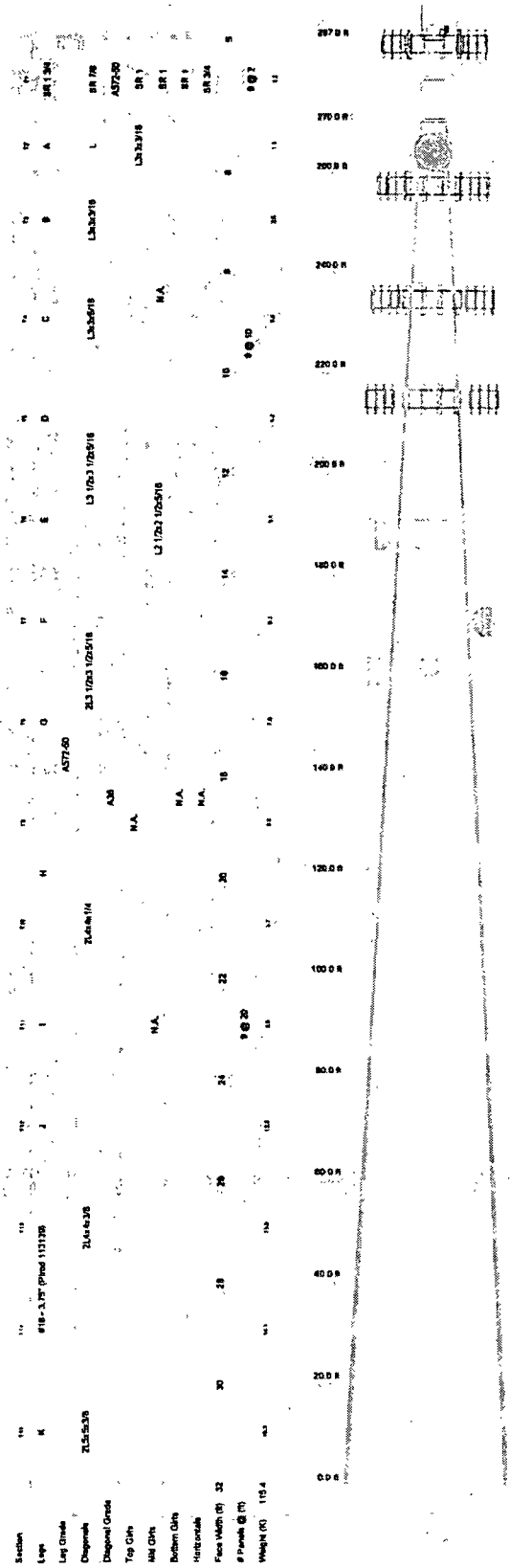
Load Case 4

Load Case 5

View of Foundation

(not to scale)





DESIGNED APPURTENANCE LOADING

TYPE	ELEVATION	TYPE	ELEVATION
Beacon	297	(4) APX75-886515-CT0	234
1/2" x 4' lightning rod	297	(6) 2" sch 40 x 96" pipe	234
(6) TBXLHB-6565A-VTM	287	(4) 2" sch 40 x 96" pipe	234
(6) TBXLHB-6565A-VTM	287	(4) 2" sch 40 x 96" pipe	234
(6) TBXLHB-6565A-VTM	287	(8) TMA (12"x12"x8")	234
(5) 2" sch 40 x 72" pipe	287	(8) TMA (12"x12"x8")	234
(5) 2" sch 40 x 72" pipe	287	(8) TMA (12"x12"x8")	234
(5) 2" sch 40 x 72" pipe	287	(4) Ericsson RRUS-11 800Mhz (17"x17.6" x9.2")	234
(8) TMA (12"x12"x8")	287	(4) Ericsson RRUS-11 800Mhz (17"x17.6" x9.2")	234
(8) TMA (12"x12"x8")	287	(4) Ericsson RRUS-11 800Mhz (17"x17.6" x9.2")	234
(8) TMA (12"x12"x8")	287	Ericsson RRUS A2 Module (15"x12.8" x3.4")	234
(4) Ericsson RRUS-11 800Mhz (17"x17.6" x9.2")	287	Ericsson RRUS A2 Module (15"x12.8" x3.4")	234
(4) Ericsson RRUS-11 800Mhz (17"x17.6" x9.2")	287	Ericsson RRUS A2 Module (15"x12.8" x3.4")	234
(4) Ericsson RRUS-11 800Mhz (17"x17.6" x9.2")	287	TMA (18.3"x8.7"x2.6")	234
Ericsson RRUS A2 Module (15"x12.8" x3.4")	287	TMA (18.3"x8.7"x2.6")	234
Ericsson RRUS A2 Module (15"x12.8" x3.4")	287	TMA (18.3"x8.7"x2.6")	234
Ericsson RRUS A2 Module (15"x12.8" x3.4")	287	(3) RFS ACU-A20-N	234
TMA (18.3"x8.7"x2.6")	287	(3) RFS ACU-A20-N	234
TMA (18.3"x8.7"x2.6")	287	(3) RFS ACU-A20-N	234
TMA (18.3"x8.7"x2.6")	287	12' V Frame	234
(3) RFS ACU-A20-N	287	12' V Frame	234
(3) RFS ACU-A20-N	287	12' V Frame	234
(3) RFS ACU-A20-N	287	(4) APX75-886515-CT0	234
12' V Frame	287	(4) APX75-886515-CT0	214
12' V Frame	287	(4) APX75-886515-CT0	214
12' V Frame	287	(4) 2" sch 40 x 96" pipe	214
8' HP	294	(4) 2" sch 40 x 96" pipe	214
(5) TBXLHB-6565A-VTM	257	(4) 2" sch 40 x 96" pipe	214
(5) TBXLHB-6565A-VTM	257	(8) TMA (12"x12"x8")	214
(5) 2" sch 40 x 72" pipe	257	(8) TMA (12"x12"x8")	214
(5) 2" sch 40 x 72" pipe	257	(8) TMA (12"x12"x8")	214
(5) 2" sch 40 x 72" pipe	257	(4) Ericsson RRUS-11 800Mhz (17"x17.6" x9.2")	214
(8) TMA (12"x12"x8")	257	(4) Ericsson RRUS-11 800Mhz (17"x17.6" x9.2")	214
(8) TMA (12"x12"x8")	257	(4) Ericsson RRUS-11 800Mhz (17"x17.6" x9.2")	214
(8) TMA (12"x12"x8")	257	Ericsson RRUS A2 Module (15"x12.8" x3.4")	214
(4) Ericsson RRUS-11 800Mhz (17"x17.6" x9.2")	257	Ericsson RRUS A2 Module (15"x12.8" x3.4")	214
(4) Ericsson RRUS-11 800Mhz (17"x17.6" x9.2")	257	Ericsson RRUS A2 Module (15"x12.8" x3.4")	214
(4) Ericsson RRUS-11 800Mhz (17"x17.6" x9.2")	257	TMA (18.3"x8.7"x2.6")	214
Ericsson RRUS A2 Module (15"x12.8" x3.4")	257	TMA (18.3"x8.7"x2.6")	214
Ericsson RRUS A2 Module (15"x12.8" x3.4")	257	TMA (18.3"x8.7"x2.6")	214
Ericsson RRUS A2 Module (15"x12.8" x3.4")	257	(3) RFS ACU-A20-N	214
TMA (18.3"x8.7"x2.6")	257	(3) RFS ACU-A20-N	214
TMA (18.3"x8.7"x2.6")	257	(3) RFS ACU-A20-N	214
TMA (18.3"x8.7"x2.6")	257	12' V Frame	214
(3) RFS ACU-A20-N	257	12' V Frame	214
(3) RFS ACU-A20-N	257	12' V Frame	214
(3) RFS ACU-A20-N	257	(4) APX75-886515-CT0	214
12' V Frame	257	8' HP	187
12' V Frame	257	8' HP	170
12' V Frame	257	4' HP	161
(5) TBXLHB-6565A-VTM	257	8' HP	109
(4) APX75-886515-CT0	234		

SYMBOL LIST

MARK	SIZE	MARK	SIZE
A	#12ZG - 1.25" - 1.00" conn. (Pmod 218705)	G	#12ZG -3.00"-0.875 -DB-0.625"-HP-Trans- (Pmod 238707)
B	#12ZG - 1.50" - 1.00" conn. (Pmod 224110)	H	#12ZG -3.25"-0.875 -DB-0.625"-HP- (Pmod 238708)
C	#12ZG 1.75" - 1.00" conn (Pmod 224113)	I	#12ZG -3.50"-0.875 -DB-0.625"-HP- (Pmod 238714)
D	#12ZC - 2.00" - 1.25" conn (Pmod 224116)	J	#18/12 Transition - 3.50" (Pmod 214884)
E	#12ZG - 2.25" - 1.25" conn (Pmod 104057)	K	#18 - 4.00" BASE ONLY(Pmod 114747)
F	#12ZG -2.50"-0.875 -DB-0.625"-HP- (Pmod 238705)	L	L2 1/2x2 1/2x3/16

MATERIAL STRENGTH

GRADE	Fy	Fu	GRADE	Fy	Fu
A572-50	50 ksi	65 ksi	A36	36 ksi	58 ksi

TOWER DESIGN NOTES

1. Tower is located in Horry County, South Carolina.
2. Tower designed for Exposure C to the TIA-222-G Standard.
3. Tower designed for a 130 mph basic wind in accordance with the TIA-222-G Standard.
4. Tower is also designed for a 30 mph basic wind with 0.50 in Ice. Ice is considered to increase in thickness with height.
5. Deflections are based upon a 60 mph wind.
6. Tower Structure Class II
7. Topographic Category 1 with Crest Height of 0.00 ft
8. TOWER RATING: 99.3%

ALL REACTIONS ARE FACTORED

MAX CORNER REACTIONS AT BASE
DOWN: 1488 K
UPLIFT: -1315 K
SHEAR 157 K

AXIAL 372 K
SHEAR 12 K — *MOMENT 2088 kip-ft*
TORQUE 3 kip-ft
30 mph WIND - 0.5000 in ICE
AXIAL 178 K
SHEAR 247 K — *MOMENT 38991 kip-ft*
TORQUE 85 kip-ft
REACTIONS - 130 mph WIND

valmont STRUCTURES
Valmont Industries Inc. - Specialty Structures Group
1545 Pidco Drive
Plymouth, IN 46563
Phone (574) 936-4221
FAX: (574) 936-6458

Job	Quotation 200796-01
Project	U-32.0 x 287' - Site 17588 - Loris, SC
Client	TriStar Investors, Inc.
Drawn by	ns1
App'd	
Code	TIA-222-G
Date	10/12/12
Scale	NTS
Path:	
Dwg No	E-1

TRISTAR

TriStar Investors, Inc.
Whitehall Towers Office Building
470 Streets Run Road, Suite 300
Pittsburgh, Pennsylvania 15236

Tel: 412.882.4630
Fax: 412.882.4632

www.tristarinvestors.com

Pam Thompkins
Assistant Zoning Administrator
Horry County Government
Planning & Zoning Department
1301 2nd Avenue, Room 1D09
Conway, SC 29526

Dear Ms. Thompkins,

My name is Mark Uminski and I am the Vice President of Engineering for TriStar Investors, Inc. I have over 30 years of experience designing, constructing and operating wireless networks throughout the United States. I have attached my Curriculum Vitae for your reference.

Pursuant to Article XVI, Section 1607(b) of the Zoning Ordinance, the tower proposed by TriStar Investors, Inc. will contain only equipment meeting the Federal Communication Commission rules and regulations.

Please feel free to contact me at (412) 368-4614 with any questions.

Sincerely,

Mark Uminski
Vice President of Engineering

Encl

Curriculum Vitae

MARK A. UMINSKI

Mark Uminski is Vice President of Engineering and an original team member of TriStar Investors, Inc. TriStar has made investments in more than 700 properties located throughout the United States.

Mr. Uminski is the former Chief Technical Officer of Crown Castle USA, Inc. In that role, he was responsible for Crown Castle's United States site design, operations, administration, and maintenance for over 10,000 towers.

Prior to his promotion in 2000 to CTO, Mr. Uminski held various national and regional roles for Crown Castle including Vice President of Business Development, Vice President and General Manager for the Mid-Atlantic Region and Vice President of Engineering. He was a member of the executive management team responsible for the acquisition and integration of the Bell Atlantic, BellSouth Mobility, GTE Mobilnet, Powertel and Ntelos tower portfolios. He also held P&L responsibility including tower leasing, new tower construction and turnkey network deployment services for PCS carriers like Cricket.

Prior to Crown Castle, Mr. Uminski worked for 20 years in the wireless industry designing, building and operating wireless networks across the United States for AT&T, McCaw Cellular and MCI Airsignal. During that career he held positions as Vice President of PCS Development, Vice President of Engineering and Operations and Vice President and General Manager.

Prior to his cellular/PCS carrier experience, Mr. Uminski was employed in the public safety and maritime radio industry as a maintenance and installation technician.

Mr. Uminski received his undergraduate Bachelor of Science Degree Cum Laude from the University of Pittsburgh, majoring in Electrical Engineering. He also completed graduate level coursework in wireless communications at Southern Methodist University and George Washington University.

12/2011

ATTACHMENT G

HORRY COUNTY
PLANNING DEPARTMENT

1301 Second Avenue
Conway, South Carolina 29526

(843) 915-5340
(843) 205-5340
FAX (843) 915-6340

October 26, 2012

Dear Property Owner:

On November 13, 2012 at 6:00 pm, the Horry County Council will hold a public hearing on a request for a telecommunications tower. The hearing will be held in the County Council Chambers in the Government & Justice Building at 1301 Second Avenue in Conway. This notice is sent to you because you own property near the proposed request. Additional information of the proposed tower request is included along with a map.

If you are unable to attend the hearing and would like to comment on a particular telecommunication tower request, please submit your written comments as soon as possible. If we receive written comments early enough, we can include them in the packet of information that goes to the County Council Members before the hearing. This gives the members time to consider your comments prior to the tower hearing. Of course, written comments are welcome anytime.

If you have never been to a public hearing before and want to know what to expect? The meetings begin at 6:00 pm, when the Chairman calls the Council to order. The first items on the agenda are public input on agenda items that are not scheduled for public hearing, approval of minutes, and approval of the agenda. A portion of the meeting is devoted to resolutions and presentations. During the Public Hearings, the public may make comments on each individual request. If you have questions about a particular proposal, I suggest that you try to get your questions answered prior to the meeting. If you have comments of a general nature not related to a scheduled public hearing on a resolution or ordinance, please make them during the public input segment at the end of the meeting.

If you have questions about a particular proposal, you may wish to call the applicant/developer or his agent directly. Phone numbers for each applicant are included on the enclosed information. Also, please feel free to call me at (843) 915-7896 or 915-5340 with any questions that you may have about the request. They have been to the site, posted signs, made photographs, and are knowledgeable about the request. If you are unable to reach someone immediately, please leave a message, and he/she will call you right back.

Public hearings are usually well attended. The time that it takes for each hearing varies based on the number of people who want to make comments.

Occasionally, requests may be deferred by County Council. In order to track the status of a permit request, you may contact the Planning Department at the above numbers.

If you have other questions, please feel free to give me a call at (843) 915-5340.

Sincerely,

David Schwerd
Principal Planner

pbt

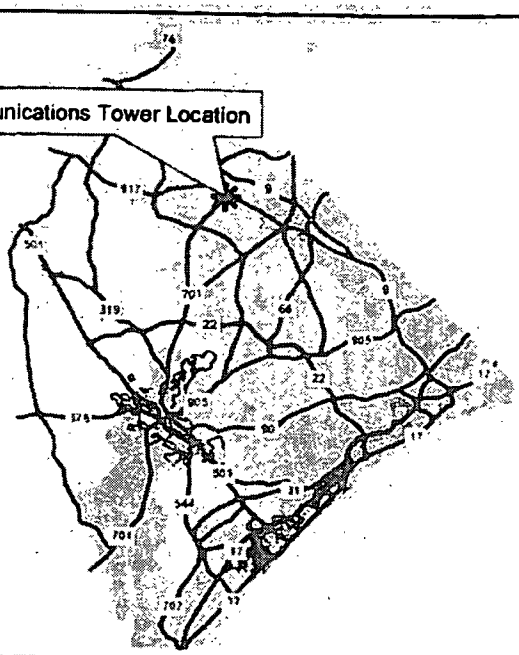
Attachments

COUNTY COUNCIL

DISTRICTS

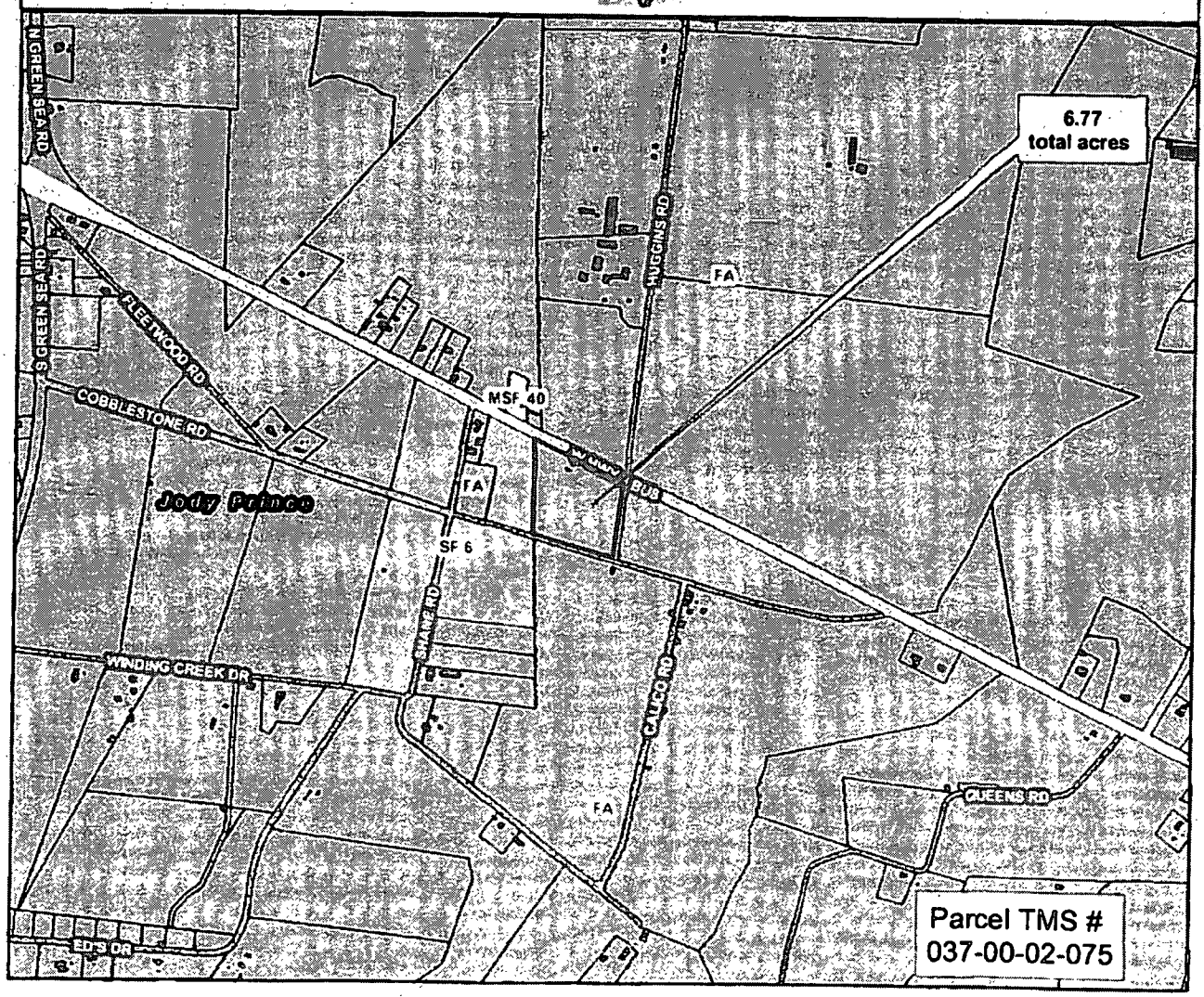
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Telecommunications Tower Location



Traffic Station Location Map

N
W E
S



PUBLIC HEARING

The Horry County Council will hold a public hearing on Tuesday, December 18, 2012 at 6:00 PM in County Council Chambers at 1301 2nd Avenue in Conway for the request of a TELECOMMUNICATIONS TOWER. **The property is located on W. Hwy 9 Business near Huggins Road and identified by TMS #037-00-02-075.** The property is currently zoned Forest Agriculture (FA). All interested persons are urged to attend. For further information, please contact the Planning Department at (843) 915-5340.

Agent Name and Number:
David Bruening, agent for Angeline D. Johnson (412) 368-4633

PUBLIC HEARING

The Horry County Council will hold a public hearing on Tuesday, November 13, 2012 at 6:00 PM in County Council Chambers at 1301 2nd Avenue in Conway for the request of a TELECOMMUNICATIONS TOWER. **The property is located on W. Hwy 9 Business near Huggins Road and identified by TMS #037-00-02-075.** The property is currently zoned Forest Agriculture (FA). All interested persons are urged to attend. For further information, please contact the Planning Department at (843) 915-5340.

Agent Name and Number:
David Bruening, agent for Angeline D. Johnson (412) 368-4633

ATTACHMENT H

County Council Decision Memorandum
Horry County, South Carolina

Date:	November 5, 2012
From:	Planning & Zoning
Division:	Infrastructure and Regulation
Prepared By:	David Schwerd, Principal Planner
Cleared By:	Janet Carter, Director of Planning
Regarding:	Telecommunication Tower TriStar #17588 (Finklea)

ISSUE:

Should County Council approve a telecommunications tower permit for TMS#037-00-02-075?

PROPOSED ACTION:

Disapprove the telecommunications tower permit.

RECOMMENDATION:

Staff recommends disapproval of the telecommunications tower permit in that County Council approved the relocation of the existing tower to a new site within ½ mile. Also County Council made a condition that the tower on this site be removed within 120 days of the final inspection and approval of the new relocated tower. Staff finds that no documentation has been provided that would justify a collocation waiver by council.

BACKGROUND:

TriStar Communications is applying for a telecommunications tower permit to construct a 287 ft freestanding lattice tower located off Hwy 9 near Huggins Road. The tower will provide a minimum of three co-location possibilities for future cellular services. The subject property is adjacent to an existing tower site. The existing tower is being removed as condition of approval of telecommunications tower site approximately ½ mile away. The existing tower does not meet the current requirements of the ordinance. The existing equipment compound will remain. The new tower will be installed on a new 40 x 40 ground lease located immediately behind the existing compound. The new tower will be set back further from Hwy 9 and would be required to meet all of the requirements of the current ordinance.

In order to approve this request County Council would have to approve a waiver of the co-location requirements.

A waiver is justified if the applicant can supply proof that co-location is not practical or warranted, or if:

1. Co-location requires an increase in height of the existing tower beyond the height restrictions imposed by Chapter 3 (Airports) of the Horry County Code of Ordinances; or

2. Co-location requiring a significant expenditure (greater than fifty (50) percent of the tower and existing facility values) of funds to reconstruct the tower to accommodate the additional facilities to maintain safe operations. A claim of significant expenditure shall be shown in a cost estimate certified by a South Carolina licensed and registered engineer providing the current and reconstruction value of the tower; or

3. Co-location is not possible due to technological incompatibilities of the proposed and existing telecommunication facilities. The technological incompatibility shall be documented in a letter certified by registered engineering or other professional knowledgeable in radio frequency technologies, as shown by employment history.

The telecommunications tower site plan meets all the requirements of Article XVI of the Horry County Zoning Ordinance, including setbacks and landscaping.

Telecommunications Tower Permit
Review Sheet

PROPERTY INFORMATION			
Applicant	TriStar	**Telecom Permit #**	12-10-0001
Tax Map (TMS) #	037-00-02-075	**County Council District #**	J. Prince
Site Location	TriStar 17588 (Finklea) Located Hwy 9 and Huggins Rd	**Staff Recommendation**	Disapproval
Property Owner Contact	David C. Bruening 412-368-4633	**Size (in acres) of Request**	.26ac

REVIEW CRITERIA		
Zoning District	**Tower Height**	**Tower Type**
Forest Agriculture (FA)	287 ft	Self Support Lattice Tower

Proximity of tower to residential structures and zoning district boundaries

The site is surrounded on 3 sides by FA zoned property. The SF6 zoned parcel adjacent to the property is currently undeveloped. The closest residential structure is just over 400ft away. The structure is not located within the engineered fall zone of the tower.

Nature of uses on adjacent and nearby properties

The adjacent uses are mostly wooded or agricultural fields with scattererd residential.

Surrounding Topography

This parcel is surrounded by fields and woods.

Surrounding tree coverage and foliage

There is significant tree coverage to the rear of this propery and along one side.

Design of tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness

The tower is designed as a 287ft self support lattice tower. The applicant is proposing to supplement the existing tree cover with landscaping down one side of the site.

Proposed Ingress and Egress

Access is provided from Hwy 9.

NOTICE INFORMATION			
Date Advertised	10/28/12	**Date Posted**	10/25/12
# of Property Owners Notified	43	**Date Notification Mailed**	10/26/12
Report Date	11/5/12	**Staff Contact**	David Schwerd Principal Planner

COUNTY OF HORRY)
) **RESOLUTION NO. _____**
STATE OF SOUTH CAROLINA)

RESOLUTION TO APPROVE THE PERMIT TO LOCATE A 287FT SELF SUPPORT LATTICE TELECOMMUNICATIONS TOWER ON TMS# 037-00-02-075 LOCATED OFF HWY 9 NEAR THE INTERSECTION WITH HUGGINS RD IN HORRY COUNTY, SOUTH CAROLINA.

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

WHEREAS, a request has been filed to permit a new 287 ft self support lattice telecommunications tower on a parcel of land identified by TMS #037-00-02-075; and

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

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

NOW THEREFORE, Horry County Council resolves to approve the permit to locate a 287 ft self support lattice telecommunications tower on TMS# 037-00-02-075 located on Hwy 9 near Huggins Rd in Horry County, South Carolina.

AND IT IS SO RESOLVED.

Dated this 13th day of November 2012.

Tele# 12-10-001

HORRY COUNTY COUNCIL

H. Tom Rice, Chairman

Harold G. Worley, District 1

Brent J. Schulz, District 2

Marion D. Foxworth, III, District 3

Gary Loftus, District 4

Paul D. Price, Jr., District 5

Robert P. Grabowski, District 6

James R. Frazier, District 7

Carl H. Schwartzkopf, District 8

W. Paul Prince, District 9

Jody Prince, District 10

Al Allen, District 11

Attest:

Patricia S. Hartley, Clerk to Council

Tele# 12-10-001

STATE OF SOUTH CAROLINA COUNTY OF HORRY TRISTAR INVESTORS, INC., MINERVA REALTY, LLC, and ANGELINE JOHNSON, Plaintiffs, vs. THE HORRY COUNTY COUNCIL, and AMERICAN TOWER CORPORATION, Defendants.	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT C/A No. 2012-CP-26-8652 **DEFENDANT AMERICAN TOWER CORPORATION'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

2012 DEC -5 PM 4:58

American Towers, LLC ("American Towers"), erroneously referred to as American Tower Corporation ("American Tower")[1] submits this Memorandum in Opposition to Plaintiffs' Application for Temporary Restraining Order and Preliminary Injunction (the "Application"). This Memorandum is based on the pleadings, affidavits, and exhibits submitted herewith, and other information that American Tower may submit to the Court at the hearing on this matter.

INTRODUCTION

TriStar Investors, Inc. ("TriStar"), a competitor of Defendant American Tower, advances disingenuous legal arguments and factual distortions in its thinly-veiled efforts to prevent competition between these parties in Horry County. What TriStar failed to tell this Court is that it has submitted its own application to the Horry County Planning & Zoning Department to build a new tower in this area, while at the same time arguing that

[1] Plaintiffs named the wrong defendant in this lawsuit. Plaintiffs named American Tower Corporation as a Defendant, but American Towers, LLC applied for and was granted the permit of which Plaintiffs complain. The relief Plaintiffs seek in their Application can and should be denied on this basis alone.

relocation of American Towers' existing tower constitutes an improper new tower which should be blocked. Despite TriStar's lengthy objections at the Horry County Council meeting on American Towers' relocation permit, the Horry County Council unanimously approved the relocation. TriStar is now making another attempt to stop its competitor. However, nothing that Plaintiffs allege would entitle Plaintiffs to any sort of injunctive relief.

Plaintiffs' Application should be denied on the following grounds:

1. Plaintiffs lack standing to challenge the Horry County Council's decision. The Supreme Court of South Carolina's rulings on this are clear;

2. Plaintiffs have not shown, and cannot show, that they will suffer irreparable harm if the injunction is not granted. The only harm Plaintiffs allege themselves incurring is a loss of money which could be remedied through money damages if there were an entitlement; and

3. Plaintiffs have not shown, and cannot show, that they will likely succeed on the merits of their underlying claim. Plaintiffs need to prove that the Horry County Council's approval of the permit application was arbitrary, but, to the contrary, the Council heard evidence from both sides and was able to make an informed decision.

4. Plaintiffs have not established that they have an inadequate remedy at law such as to entitle them to the drastic equitable relief of an injunction.

5. The doctrine of unclean hands prevents Plaintiffs from obtaining equitable relief since Plaintiffs acted unfairly in relation to the subject matter of this case. American Towers negotiated and signed an extension of its lease with the Landowner, but now, since Landowner has become involved with TriStar/Minerva, Landowner/TriStar/Minerva deny the enforceability of Landowner's lease extension with American Towers;

FACTUAL BACKGROUND

American Towers is in the business of owning and operating communications sites for the wireless industry. American Towers will lease real property from a landowner, obtain the necessary zoning and building permits, and build a tower. The

towers themselves are owned by American Tower, just located on leased land. American Towers then finds and negotiates rates with telecommunications carriers who lease space on the tower from American Towers.

At issue in this case, American Towers, LLC f/k/a American Towers, Inc. operates a communications site, known as the "Finklea Site", located at the corner of Huggins Road and Route 9, Myrtle Beach, South Carolina 29572. (Affidavit of Robert McNiel at ¶ 5, attached hereto as Exhibit A). Three cellular telephone companies currently use space on the tower to broadcast and transmit voice and data signals. (Id. at ¶ 6).

American Towers obtained the right to operate its tower at the Finklea Site through a lease. Current landowner Angeline Johnson ("Landowner") and American Towers are the successors-in-interest to the lessor and lessee, respectively, under a January 14, 1995 Lease Agreement entered into between Louise D. Strickland, then the landowner of the Finklea Site, and Vanguard Cellular Systems of South Carolina, Inc. (the "Lease Agreement"). Pursuant to its terms, the Lease Agreement Site runs through January, 2015.

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

> 8. Removal of Lessee's Improvements Upon Termination. Lessor [Johnson] covenants and agrees that no part of the improvements constructed, erected or placed by Lessee [American Tower] on the Demised Premises shall become, or be considered as being affixed to or a part of, the Demised Premises,

> any and all provisions and principles of law to the contrary notwithstanding, it being the specific intention of Lessor that all improvements of every kind and nature constructed, erected or placed by Lessee on the Demised Premises shall be and remain the property of Lessee. Lessee, upon termination of this Agreement shall within 120 days, remove all such improvements, including without limitation the tower, equipment building and any fencing, from the Demised Premises. The Demised Premises shall be returned in a condition that reasonably matches its original condition (except for any tree, shrub or other vegetation that was removed), reasonable wear and tear excepted. Lessee shall compensate Lessor, on a pro rata basis, for each day said personal property and fixtures remain on the Demised Premises after termination of this Agreement, at the monthly rent in effect at the time of termination until such time as removal of the improvements is completed. [2]

In addition to requiring American Towers to remove the tower upon expiration of the lease, this provision of the Lease Agreement makes clear that the steel tower and its parts are owned and controlled by American Towers at all times. Neither Landowner nor its agents have any rights to the tower structure itself, its components, its fixtures and equipment, or the associated permits and contracts for its operation.

In October, 2007, American Towers and the Landowner negotiated and signed an amendment to the Lease Agreement to extend the duration of American Towers' lease at the site (the "Lease Extension") through January, 2030. (See footnote 2 below).

Subsequently, in June, 2010, Landowner entered into an Exclusive Easement and Assignment Agreement (the "Easement Agreement") with TriStar's subsidiary Minerva Realty, LLC ("Minerva"). Pursuant to the Easement Agreement and a corresponding letter agreement, Landowner granted Minerva an exclusive "communications easement" at the property of the Finklea Site for the transmission of wireless communication signals. Paragraph 2 of the Easement Agreement states that the "communications easement" granted to Minerva is subject to the term of American Towers' Lease Agreement at the

[2] American Towers will make available to the Court at the hearing copies of the Lease Agreement and Lease Extension as these documents contain a confidentiality clause and contain American Towers' confidential pricing information.

Finklea Lease, including all amendments. In their Complaint, Plaintiffs even allege that TriStar/Minerva does not have communication rights at the property until the expiration of American Tower's lease. (Cmplt. at ¶ 3). TriStar is not a party to the Easement Agreement. A true and correct copy of the Easement Agreement is attached hereto as Exhibit B.

In exchange for the "communications easement" and rights granted to Minerva, the Landowner received a lump-sum, up-front payment of $100,000. According to the allegations made in Plaintiffs' Complaint, the $100,000 payment would equal over 10 years of current rent. Plaintiffs admit that Landowner already received this lump-sum payment. (Cmplt. at ¶ 3).

In connection with the Easement Agreement, Landowner disclosed a copy of American Towers' Lease Agreement to TriStar/Minerva in violation of the Lease Agreement's confidentiality clause. After learning of this violation of the Lease Agreement's confidentiality clause, American Towers filed suit against Landowner, TriStar, and Minerva for breach of the Lease Agreement and for a declaratory judgment, Case No. 2012-CP-26-2912, pending in Horry County (the "Breach Of Lease Lawsuit").

In the Breach Of Lease Lawsuit, American Towers alleged that the duration of its Lease Agreement at the Finklea Site with amendments runs through January, 2030, due to the Lease Extension. (Breach Of Lease Lawsuit Cmplt. at ¶ 12). On or about May 14, 2012, Landowner/TriStar/Minerva filed an Answer, all refusing to acknowledge the lease extension. At ¶ 11 of their Answer, Landowner/TriStar/Minerva stated that, "Defendants specifically deny that the term of the Land Lease runs through January 13, 2030." True and correct copies of the Complaint and Answer from the Breach Of Lease Lawsuit are

attached hereto as Exhibits C-D, respectively. In their Complaint in this action, Plaintiffs – even Landowner Johnson who signed the Lease Extension – state that they are "uncertain" whether to recognize the extension of American Tower's Lease Agreement through January, 2030. (Cmplt. at pg. 3, fn. 1).

After Landowner/TriStar/Minerva denied the enforceability of American Towers' lease extension at the Finklea Site, and given that the original terms of the Lease Agreement end in 2015, American Towers sought to move its tower currently located at the Finklea Site. On June 28, 2012, American Towers signed an agreement with landowner Brenda G. Huggins (the "Huggins Lease") to lease certain property near American Towers' Finklea Site (the "Huggins Property")[3]. (Affidavit of Brenda Huggins, attached hereto as Exhibit E). A true and correct copy of a Memorandum of Lease, which memorializes certain terms of the Huggins Lease is attached hereto as Exhibit F.

On or about August 31, 2012, American Towers filed a petition with the Horry County Planning & Zoning Department, seeking to move its existing tower to the Huggins Property (the "Relocation Petition"). A true and correct copy of American Towers' Relocation Petition with the supporting materials is attached hereto as Exhibit G. Notice was provided of the Relocation Petition, and, on October 16, 2012, the Horry County Council held an open hearing to vote on the Relocation Petition. American Towers made a presentation at that meeting. Representatives for TriStar/Minerva, including its legal counsel, also appeared and made a presentation, objecting to the Relocation Petition. Over TriStar/Minerva's objection, the Horry County Council unanimously granted the

[3] The Huggins Property is located at 215 Huggins Road, Loris, South Carolina, approximately ½ mile away from the current tower site. The Huggins Property does not adjoin the property leased under the Lease Agreement.

Relocation Petition, as Resolution R-73-12. An Affidavit of David Schwerd, a staff member of the Horry County Planning and Zoning Department, is attached hereto as Exhibit H. A true and correct copy of the transcript from the October 16, 2012 hearing is attached hereto as Exhibit I. Not only did TriStar/Minerva have an opportunity to make a presentation at that hearing, but Council members then posed questions to the TriStar/Minerva and American Towers representatives present at the hearing. (*Id.*).

On or about October 23, 2012, TriStar petitioned the Horry County Council to reconsider the Council's resolution approving the Relocation Petition. A true and correct copy of TriStar's October 23, 2012 rehearing request is attached hereto as Exhibit J. Soon thereafter, TriStar withdrew that rehearing request, failing to further appeal to the County.

TriStar/Minerva's Complaint fails to inform the Court that TriStar submitted its own petition to build a new cellular tower to the Horry County Planning & Zoning Department (the "TriStar New Tower Petition") in addition to the existing towers in place. TriStar submitted certain documents for its New Tower Petition on October 2012. (Aff. of David Schwerd at ¶ 11). A true and correct copy of TriStar's New Tower Request is attached hereto as Exhibit K.

Plaintiffs filed this Application/Complaint for a Temporary Restraining Order and Preliminary Injunction on November 8, 2012. Plaintiffs did not mail American Towers a copy of the Application/Complaint until November 26, 2012, the day before Thanksgiving. The Application/Complaint names the wrong Defendant. Plaintiffs named American Tower Corporation as a Defendant, but American Towers, LLC applied for and was granted the permit.

American Towers has communicated with the telecommunications carriers who have leased space on American Towers' tower at the Finklea Site. (Aff. of Robert McNiel at ¶ 19); see Exhibit A. All of the carriers have agreed to move their equipment to the proposed tower on Brenda Huggins' property. (Id.).

ARGUMENT

A preliminary injunction is a drastic remedy. *Levine v. Spartanburg Regional Services District, Inc.*, 367 S.C. 458, 626 S.E.2d 38 (2005). To establish a need for injunctive relief, a plaintiff must show: (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *Id.*; *County of Richland v. Simpkins*, 348 S.C. 664, 671, 669, 560 S.E.2d 902, 904 (Ct. App. 2002). In addition to these requirements, before granting injunctive relief, a trial court should balance the equities. The court should look at the particular facts of the case and the equities of each party and determine which side, if any, is more entitled to equitable relief. *Levine*, 367 S.C. at 464.

Here, Plaintiffs cannot meet any of these elements and their Application for injunctive relief must be denied.

A. PLAINTIFFS LACK STANDING

Standing to sue is a fundamental requirement in instituting an action. *Joytime Distribs. and Amusement Co. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). Before reaching the merits of a case, a court must determine whether a plaintiff possesses standing to present its claim. *See Ex parte State ex rel. Wilson*, 391 S.C. 565, 573, 707 S.E.2d 402, 407 (2011). A plaintiff can possess standing based on a statute, by having suffered an injury in fact to a legally protected interest, or through the public importance

exception. *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 669 S.E.2d 337 (2008).

Here, Plaintiffs do not possess standing to appeal the Council's approval of American Towers' Relocation Petition. Plaintiffs have not cited any statute which would confer standing, have not suffered injury to a legally protected interest, and do not meet the requirements for the public importance exception. Plaintiffs have not and cannot point to any contractual provision which is being violated. TriStar is not even a party to any of the agreements at issue. Plaintiffs allege "injury" but only to their goals and desires, not to any protectable legal right. Pursuant to ¶ 8 of the Lease Agreement, American Towers owns the steel tower and is required to remove the tower upon expiration of the lease. Further, American Towers is not prevented from doing so prior to the expiration of the Lease.

In a substantially similar case, *ATC South v. Charleston County*, the Supreme Court of South Carolina addressed whether a cellular tower company possessed standing to challenge a county decision to allow an applicant to construct a cellular communications tower. In no uncertain terms, the Supreme Court of South Carolina determined that competitors lack standing to challenge local zoning decisions made by a county government. *Id.* at 197-198. The court determined that competitors in the cellular tower industry do not have a protectable right which would confer standing to construct towers or prevent a competitor from constructing a tower. *Id.* The court also determined that the case did not fall under the public importance exception— that a cellular tower company's efforts to 'cloak' a zoning challenge as a matter of public importance would not gain traction with the Supreme Court. *Id.* at 200. The court affirmed the dismissal of the case based on plaintiff's lack of standing to challenge the county action. *Id.*

In the same way, due to Plaintiffs' lack of standing, the Court must deny Plaintiffs' Application for injunctive relief and dismiss this case. Plaintiffs have not provided any evidence to support the notion that a legally protected interest is being injured.

B. NO IRREPARABLE HARM

Irreparable harm is lacking. Plaintiffs make speculative allegations about potential harm to the cellular carriers that lease space on American Towers' tower or relationships with those carriers. However, all such allegations are speculative, conclusory, and must be ignored. A plaintiff is required to show that the plaintiff itself will experience irreparable harm for injunctive relief to issue. *Levine*, 367 S.C. at 464. The contracts and relationships with the carriers at the Finklea Site belong to American Towers, not any of the Plaintiffs. Further, American Towers has been in communications with all three of its carriers at the tower and all three agreed to move their equipment to the relocated tower at the Huggins Property. (Aff. of Robert McNiel at ¶ 19).

Plaintiffs allege that the current Landowner will be deprived of a percentage of revenues into the future, however, American Towers intends to pay Landowner all rent American Towers is obligated to pay. In addition, Landowner has already received $100,000 from Plaintiffs as compensation for the easement. Plaintiffs do not allege that American Towers is breaching any contracts with the Landowner or with anyone else. To the contrary, American Towers is attempting to move its tower so that it can fulfill its contractual obligations to Landowner, to new landowner Brenda Huggins, and to the three communications carriers which lease space on the tower. Further, any alleged deprivation of revenues can be addressed through money damages.

Plaintiffs allege the construction of a new tower and removal of the existing tower, however, this is not harm to any of the Plaintiffs. American Towers owns the steel tower and is obligated, per ¶ 8 of American Towers' Lease Agreement with the Landowner, to remove the tower from the current site. Further, these actions are not irreparable. American Towers is able to construct and deconstruct towers within a period of approximately 30 days. (Aff. of Robert McNiel at ¶ 21). Towers go up and down on a routine basis.

Moreover, any consideration of harm must weigh the harm to new landowner Brenda Huggins in the event that construction of the new tower is slowed. If building permits are not granted by the County in a timely manner, under the provisions of the Huggins Lease, American Towers may terminate that lease. (Aff. of Brenda Huggins at ¶ 11). In contrast, the current Landowner already received a $100,000 lump-sum payment from TriStar/Minerva. She is being paid rent under the Lease Agreement by American Towers until conclusion of that lease. American Towers negotiated and executed the Lease Extension with her, however, due to TriStar/Minerva's influence, Landowner/TriStar/Minerva have all denied enforceability of the Lease Extension. TriStar tries to allege harm to the Landowner, but is only concerned with it having to compete with American Towers.

Accordingly, as Plaintiffs have failed to allege irreparable harm and the potential harm to Brenda Huggins outweighs any alleged harm to Plaintiffs, Plaintiffs' Application for injunctive relief should be denied.

C. NO LIKELIHOOD OF SUCCESS ON THE MERITS

Plaintiffs have not shown, and cannot show, that they will likely succeed on the merits of their underlying administrative appeal.

1. Standard on Plaintiffs' Claim

Plaintiffs revealed the law applicable to this case in a footnote, trying not to draw attention to the high burden for Plaintiffs' claim. (Cmplt. at pp. 8, fn. 3). As noted in Plaintiffs' footnote No. 3, the Horry County Council's decision is like that of a zoning board which shall not be upset unless arbitrary, unreasonable, in obvious abuse of discretion, or in excess of lawfully delegated power.

Under South Carolina law, a reviewing court's standard of review is very deferential to a government entity's decision as its findings are equated to a jury's findings. South Carolina Code 1976 § 6-29-840. This standard has been interpreted to require that a court not disturb a board's findings and decision unless there is no evidence which reasonably supports the board's decision. *Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals*, 342 S.C. 480, 488, 536 S.E.2d 892, 896 (Ct. App. 2000).

A reviewing court must refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision. *McSherry v. Spartanburg County Council*, 371 S.C. 586, 590 641 S.E.2d 431, 433 (2007) ("in reviewing the discretionary decision of a legislative body, our courts have been loath to substitute their judgment for that of elected representatives. Such decisions should not be upset on appeal unless they are arbitrary, unreasonable, in obvious abuse of discretion, or in excess of lawfully delegated power."); *Restaurant Row Assocs. v. Horry County*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999). "Courts are bound to afford substantial deference to the decisions of those charged with interpreting and applying local zoning ordinances." *Clear Channel*

Outdoor v. City of Myrtle Beach, 360 S.C. 459, 465, 602 S.E.2d 76, 79 (Ct. App. 2004), *aff'd*, 372 S.C. 230, 642 S.E.2d 565 (2007).

2. Evidence in the Record Reasonably Supports Council's Decision

In order to succeed on their claim, Plaintiffs must show that approval of the Relocation Petition was arbitrary, unreasonable, an abuse of discretion, or in excess of delegated power. However, Plaintiffs have not shown the existence of any of these through supportable facts. To the contrary, the evidence submitted to the Horry County Council in support of the Relocation Petition surpasses the *Vulcan* no evidence standard of review.

Section 13-70 of Article VII of the Horry County Code of Ordinances, attached hereto as Exhibit L, states that all new freestanding telecommunications towers shall obtain a telecommunications permit, unless exempted by the zoning ordinance. Section 13-73(a) outlines the criteria that shall be considered when reviewing a permit application and Section 13-73(b) states that the County Council may approve a waiver of the co-location requirements when the waiver is justified and the applicant can supply proof that co-location is not practical or warranted.

In support of its Relocation Petition, American Towers submitted the materials attached hereto at Exhibit G. American Towers provided numerous details regarding the proposed tower, including information on the height of the proposed tower, the surrounding topography, surrounding tree coverage and foliage, and the design of the tower. American Towers also presented evidence that supported waiver of the co-location requirements, as the new tower was a re-location of American Towers' existing tower, not a co-location where both towers would operate. American Towers demonstrated that co-location was not warranted or needed as the cellular companies, American Towers'

customers, would move their equipment to the relocated tower. (August 31, 2012 letter at Exhibit G). The evidence set forth by American Towers was discussed at the October 16, 2012 Horry County Council meeting, and Council members posed questions to American Towers' representatives on any open questions. (October 16, 2012 Transcript at Exhibit I). The Horry County Council found that the Relocation Petition satisfied the criteria of Section 13-73 and approved the permit. (Exhibit A to Cmplt.).

The Council's decision was based upon substantial evidence, was not arbitrary or outside of the bounds of its authority. The Council is specifically tasked with reviewing and issuing such permits. TriStar appeared at the October 16, 2012 hearing with multiple representatives and made its objections. The fact that the Council did not buy into TriStar's objections does not mean that the Council's decision was arbitrary or unreasonable. To the contrary, the Council heard evidence from all parties and was able to make an informed decision. Further, the fact that TriStar submitted its own application for a new tower within 50 feet of American Towers' current tower shows that not even TriStar believes the positions it is asserting in this case. TriStar is a competitor and simply trying to block the competition. Plaintiffs' claim lacks merit and Plaintiffs' Application must be denied.

D. ADEQUATE REMEDY AT LAW

Plaintiffs' Application must also be denied as an adequate remedy at law exists. The only harm Plaintiffs allege is a loss of revenues (which they have no legal claim to). This is monetary harm and can be compensated. When money damages are available, an injunction cannot issue. *MailSource, LLC v. M.A. Bailey & Associates*, 356 S.C. 363, 369, 588 S.E.2d 635, 639 (S.C. App. 2003) (in affirming denial of injunctive relief, appellate

court stated that "An injunction is an equitable remedy; as such, it is available only where no remedy at law exists or where the legal remedy would fail to make the party whole."). As such, Plaintiffs' Application for injunctive relief must be denied.

E. PLAINTIFFS HAVE UNCLEAN HANDS

Actions for injunctive relief are equitable in nature. *Grosshuesch v. Cramer*, 367 S.C. 1, 623 S.E.2d 833 (2005). If a party has unclean hands, that party is precluded from recovering in equity. A party will have unclean hands where the party behaves unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. *Anderson v. Buonforte*, 365 S.C. 482, 617 S.E.2d 750 (Ct. App. 2005).

Here, Landowner has unclean hands as she negotiated and signed the Lease Extension with American Towers but now denies the enforceability of that Lease Extension in an effort to extract a higher new lease rate. American Towers tried to continue to operate from Landowner's property, but when Landowner/TriStar/Minerva denied the enforceability of the Lease Extension, American Towers sought to move its tower to another property.

TriStar alleges anticompetitive acts, however, TriStar's Complaint and Application is anticompetitive. Through this lawsuit, TriStar seeks to gain control of an asset, American Tower's cellular tower, block American Towers' efforts to relocate the tower, and then lease or sell the existing tower back to American Tower at a premium. However, TriStar has no rights to the existing tower. In addition, TriStar applies to Horry County for a permit to construct its own tower within 50' of American Tower's existing tower.

Plaintiffs cannot credibly ask this Court to grant them an equitable remedy when they have not dealt equitably with American Towers. A balancing of the equities tips the

scales in favor of Defendants. Because of Plaintiffs' unclean hands, this Court should refuse to grant the injunctive relief sought.

CONCLUSION

Plaintiffs lack standing to bring this claim. Plaintiffs have also failed to establish the elements for an injunction – irreparable harm, likelihood of success, and an inadequate legal remedy. Further, because Plaintiffs come into Court with unclean hands, they are not entitled to equitable relief. For these reasons, Defendant American Tower Corporation respectfully requests that this Court deny Plaintiffs' Application for a Temporary Restraining Order and Preliminary Injunction and dismiss this case.

Respectfully Submitted,

Date: December 5, 2012

By: _____

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Attorneys for Defendant American Tower Corporation

Exhibit A

STATE OF SOUTH CAROLINA COUNTY OF HORRY TRISTAR INVESTORS, INC., MINERVA REALTY, LLC, and ANGELINE JOHNSON, Plaintiffs, vs. THE HORRY COUNTY COUNCIL, and AMERICAN TOWER CORPORATION, Defendants.	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT C/A No. 2012-CP-26-8652

STATE OF Texas)
)
COUNTY OF Dallas)

AFFIDAVIT OF ROBERT MCNIEL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

another property.

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

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

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

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

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

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

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

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

FURTHER AFFIANT SAYETH NOT.

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

KATHERINE BRIDGES DRYDEN
Notary Public, State of Texas
My Commission Expires
September 11, 2016

_____ (L.S.)
Notary Public for the State of Texas
My Commission expires: 9/11/16

Exhibit B

Exhibit A

PREPARED BY AND
WHEN RECORDED MAIL TO:

iMortgage Services LLC
2570 Boyce Plaza Road
Pittsburgh, PA 15241

Instrument#: 2010060066785, DEED BK: 3468 PG: 3454 DOCTYPE: 062 07/02/2010 at 04:30:00 PM, 1 OF 12 COUNTY STAMPS: $106.15 STATE STAMPS: $250.90 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

_____SPACE ABOVE THIS LINE FOR RECORDER'S USE _____

EXCLUSIVE EASEMENT AND ASSIGNMENT AGREEMENT

THIS EXCLUSIVE EASEMENT AND ASSIGNMENT AGREEMENT ("Agreement") is made as of the 10th day of June, 2010 ("Effective Date") by and between **ANGELINE D. JOHNSON** ("Grantor") and **MINERVA REALTY, LLC**, a Delaware limited liability company ("Grantee"). Grantor and Grantee are at times collectively referred to hereinafter as the "Parties" or individually as a "Party".

RECITALS:

WHEREAS, Grantor is the owner of that certain real property located at 200 Huggins Road a/k/a S Side of HWY 9, Loris, Horry County, South Carolina 29569 ("Property"), which Property is more particularly described on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Grantor and Grantee have entered into that certain Letter Agreement last executed the 18th day of March, 2010 ("Letter Agreement"), in which Grantor has agreed to grant to Grantee certain easement rights to a portion of the Property in accordance with the terms herein.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars ($10.00) in hand paid, the mutual promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Grantor and Grantee hereby agree and covenant to and with each other the following:

1. **Recitals.** The recitals set forth above and the Letter Agreement are incorporated herein by reference and made a part of this Agreement.

2. **Grant of Easement.**

(a) Grantor grants, bargains, sells, transfers and conveys to Grantee:

(i) an easement in, to, under and over the portions of the Property, substantially as shown or described on Exhibit "B" attached hereto ("Communication Easement"), for the transmission and reception of any and all wireless communication signals and the construction, maintenance, repair, replacement, improvement, operation and removal of towers, antennas, cabinets, buildings, ice bridges, fences, gates and all related facilities (collectively "Facilities"), and any and all activities and uses of the Communication Easement related to the operation of a wireless communications site, which Communication Easement shall be exclusive except for any contrasting rights granted prior to the Effective Date via the leases or other agreements listed on Exhibit "C" ("Current Agreements") and exclusive upon the expiration or earlier termination of such Current Agreements; and

(ii) non-exclusive easements in, to, under and over portions of the Property ("Access and Utility Easements") for ingress and egress to and from the Communication Easement and a publicly dedicated roadway, and for the installation, repair, replacement, improvement, maintenance and removal of utilities providing service to the Communication Easement and the Facilities, and any related activities and uses; the Communication Easement and Access and Utility Easements are collectively referred to herein as the "Easement".

(b) The Parties agree that the Easement shall be modified to include any additional areas utilized by the lessee or any assignees or sublessees under the Current Agreements at the time of expiration of such respective Current Agreements if any such areas extend beyond those areas described in Exhibit "B". Such additional areas may be documented by a survey acquired by Grantee at Grantee's cost. Grantee shall have the right to replace any site plan or description provided in Exhibit "B" or on any ancillary documents with a survey.

3. **Assignment of Current Agreements.** Grantor transfers and assigns to Grantee, as of the Effective Date, any and all of its beneficial rights, title and interest in, to and under the Current Agreements, including but not limited to (i) the right to receive any and all rents and other monies due to Grantor thereunder, including from any assignees or sublessees, and on any and all extensions thereof, and (ii) the right to modify, extend, expand and/or terminate the Current Agreements. Grantor covenants and agrees that Grantor remains the fee owner of the Property and Grantor is not assigning and shall continue to comply with all of Grantor's obligations as lessor under the Current Agreements. Notwithstanding the foregoing, to the extent that any of the Current Agreements require any assignee of Grantor's rights to assume all obligations of Grantor under the Current Agreements, then (i) Grantor also transfers and assigns to Grantee, as of the Effective Date, any and all of its obligations in, to and under the Current Agreements, (ii) Grantee assumes, recognizes and is responsible for all such obligations, and (iii) Grantor shall cooperate with Grantee to facilitate Grantee's fulfillment of all such obligations, and Grantor shall indemnify, defend and hold harmless Grantee for any performance of Grantee of such

obligations that reasonably relate to the Property outside of the Easement. During the term of the Current Agreements, maintenance of the Easement is the responsibility of any tenants under the Current Agreements. In the event of a default by a tenant with respect to any maintenance obligation under any of the Current Agreements, Grantee shall not be responsible for such default nor obligated to cure or seek remedy for such default, and Grantor may pursue such remedies from the defaulting tenant as may be available to Grantor under the Current Agreements or at law or equity.

4. Use of Easement. Grantor shall provide to Grantee the quiet enjoyment and use of the Easement. Grantee shall have the exclusive, unrestricted right to lease, sublease, license, transfer, assign or encumber, in whole or in part, or grant the use of the Easement and/or its rights under this Agreement to any third parties, including but not limited to (i) communication service providers or tower owners or operators, (ii) any lessee, sublessee or licensee under the Current Agreements, (iii) the affiliates, subsidiaries, parents, successors, purchasers in whole or in part, agents, contractors, invitees and employees of Grantee, and (iv) Grantee's present or future lessees, sublessees or licensees (collectively "Customers"). Grantee and its Customers shall have the right to enter and access the Easement at any time, twenty-four (24) hours a day, seven (7) days a week.

5. Term. This Agreement and the Easement shall be perpetual commencing on the Effective Date, except if terminated in accordance with the terms herein.

6. Termination. In the event Grantee and Customers cease all use of all portions of the Easement for a period of more than five (5) consecutive years (for reasons other than casualty or force majeure) subsequent to the expiration or earlier termination of the Current Agreements, the Easement shall be deemed abandoned. Limited or partial use of the Easement by Grantee or any Customers shall not be deemed a surrender or abandonment of the Easement or any unused portion thereof, nor prevent Grantee from benefiting from the full use and enjoyment of the entirety of the Easement. Grantee may abandon the Easement upon thirty (30) days notice to Grantor. This Agreement may not be terminated by Grantor. Upon abandonment, this Agreement shall be terminated, and Grantee and Grantor shall cooperate in the execution and recordation of such documents reasonably required to evidence such termination.

7. Improvements. Grantee and its Customers may, at their discretion and expense, construct improvements in, to, under and over the Easement, all of which shall be deemed part of the Facilities. The Facilities shall remain the personal property of Grantee and its Customers, as applicable, and Grantor shall possess no right, title or interest therein. Grantee and its Customers may from time to time temporarily utilize additional portions of the Property contiguous to the Easement to the minimum extent necessary for installation, maintenance or other work on the Facilities, or for the placement of mobile facilities to maintain service during periods of repair or replacement of the Facilities. Grantor shall be under no obligation to reserve any such additional Property. Any such additional Property that is used hereunder shall be returned to the condition which existed prior to such use promptly upon the completion of such use.

8. Taxes. Upon the expiration of the Current Agreements, Grantee shall thereafter be responsible for all taxes directly attributable to the Facilities as evidenced by an applicable tax bill. Grantor shall pay all other taxes that are not directly attributable to the Facilities. To the extent that Grantor shall fail to pay timely any taxes on the Property for which Grantor is responsible, Grantor shall (i) waive all future payments due from Grantee, if any, and (ii) at Grantee's election, subdivide the Easement and any additional space necessary to satisfy any minimum lot requirements from the Property and convey such subdivided parcel to Grantee, and Grantor hereby irrevocably constitutes and appoints Grantee as its true and lawful attorney-in-fact, with full power of substitution, to apply for and obtain

such subdivision and conveyance. Grantor shall reimburse Grantee for all costs incurred in obtaining such subdivision and conveyance.

9. Exclusive Use. Except for Grantee's use or the use of any Customers or third parties with Grantee's permission or as otherwise permitted by the Current Agreements, no portion of the Property or any other property owned by Grantor and located within a five (5) mile radius of the Property shall be used for the purpose of or in connection with communications towers and/or facilities without the prior written consent of Grantee, which consent may be withheld in Grantee's sole discretion. Grantor shall not install or permit to be installed any structure or equipment which causes measurable interference to the equipment of Grantee or its Customers, or otherwise permit any portion of the Property to be used in a manner which materially interferes with the operations of Grantee and/or any Customers. Grantor and Grantee acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this section and therefore, Grantee shall have the right to specifically enforce the provisions herein in a court of competent jurisdiction.

10. Environmental Covenants and Indemnity. Grantor represents that it has no knowledge of any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation ("Hazardous Materials") located on, under or about, or otherwise affecting, the Property or the Easement. Neither Grantor nor Grantee will introduce or use any Hazardous Materials on, under or about the Property or the Easement in violation of any applicable law or regulation. Grantor and Grantee shall indemnify, defend and hold the other Party harmless from and against any and all demands, claims, enforcement actions, costs and expenses, including reasonable attorneys' fees, arising out of the presence of Hazardous Materials upon or affecting the Property or the Easement and caused by the indemnifying Party. The foregoing indemnity shall survive any termination of this Agreement.

11. General Indemnity. Grantor and Grantee shall each indemnify, defend and hold the other harmless against any and all costs and claims of liability or loss arising (i) due to the breach of any representation, warranty or covenant of such indemnifying Party set forth herein, or (ii) out of the use and/or occupancy of the Property or the Easement by the indemnifying Party, except to the extent arising from the negligence or intentional misconduct of the indemnified Party. The foregoing indemnity shall survive any termination of this Agreement.

12. Transfer of the Property; Assignment. The provisions and covenants contained in this Agreement shall run with the land and shall bind and inure to the benefit of the Parties and their respective successors, heirs and assigns. Should Grantor sell or otherwise convey all or any part of the Property to a purchaser or transferee other than Grantee, such sale or conveyance shall be under and subject to the terms contained in this Agreement and Grantee's rights hereunder. Notwithstanding the foregoing, the Easement is for the benefit of Grantee, its Customers, successors and assigns, rather than for the benefit of any other tract of land, and may be assigned freely, in whole or in part, by Grantee and its successors and assigns.

13. Mortgages. At Grantor's option, this Agreement and the Easement shall be subordinate to any mortgage or other security interest by Grantor which from time to time may encumber all or part of the Easement so long as Grantor's lender shall agree in writing in a form reasonably acceptable to Grantee that such lender will not disturb Grantee's possession and rights under this Agreement so long as Grantee remains in compliance with this Agreement.

14. Secured Parties. Grantee shall have the unrestricted right to assign, mortgage or grant a security interest in Grantee's interest in and to this Agreement and the Easement, and may assign this Agreement and the Easement to any such assignees, mortgagees or holders of security interests, including

their successors and assigns ("Secured Parties"). If Grantee fails to perform any of its obligations under this Agreement, Grantor agrees to provide written notice of such default to Grantee and all Secured Parties of which Grantor has been notified, and to give Grantee and/or such Secured Parties the right to cure such default within a period of not less than sixty (60) days from receipt of the written default notice.

15. Estoppel Certificate. Each Party shall, within ten (10) days after request by the other Party, execute and deliver to the requesting Party, or the Party designated by the requesting Party, a statement certifying (i) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, stating the modifications and that the modified Agreement is in full force and effect); (ii) whether either Party is in default in performance of any of its obligations under this Agreement, and, if so, specifying each default; and (iii) any other information reasonably requested concerning this Agreement.

16. Condemnation. In the event of any condemnation of the Easement in whole or in part, Grantee shall be entitled to file claims against the condemning authority for, and to receive, the entire value of the portion of the Property so taken on which the Easement is located, business dislocation expenses and any other award or compensation to which Grantee may be legally entitled.

17. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given one (1) day after posting with a nationally recognized overnight courier service, or the earlier of receipt or ten (10) days after posting by registered or certified mail, return receipt requested, to the addresses of Grantor and Grantee as set forth on the signature page. Either Party may change its notice address by providing notice as set forth herein.

18. Miscellaneous.

(a) This Agreement, including all Exhibits attached hereto and the Letter Agreement which is incorporated herein by reference, constitutes the entire agreement and understanding of Grantor and Grantee with respect to the subject matter of this Agreement, and supersedes all offers, negotiations and any other written or verbal agreements, and any amendments to this Agreement must be in writing and executed by both Parties;

(b) this Agreement is governed by the laws of the State in which the Property is located;

(c) in the event that either Party fails to pay when due any taxes, loans, judgments or payments attributable to or encumbering the Property, Easement or this Agreement, the other Party shall have the right, but not the obligation, to pay such sums on behalf of the non-paying Party, and the non-paying Party shall thereafter reimburse the paying Party for the full amount of such sums paid within five (5) business days of the non-paying Party's receipt of an invoice from the paying Party, or at the Paying party's option the paying Party may offset such amount, plus reasonable interest thereon, against any sums due from the paying Party to the non-paying Party;

(d) if any term of this Agreement is found to be void, invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the minimum extent necessary to be operative, valid and enforceable to most closely reflect the intent of the Parties as expressed herein, or if such modification is not

practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect;

(e) the Parties shall perform, execute and/or deliver promptly any and all such further acts and documents as may be reasonably required to consummate and continue to effectuate the transaction contemplated hereby, including any documents required for Grantee to acquire title insurance on the Easement;

(f) the section headings of this Agreement have been inserted for convenience of reference only, and shall in no way modify or restrict the terms of this Agreement;

(g) this Agreement has been negotiated at arm's-length, and in the event of any ambiguity in any of the terms and provisions, this Agreement shall be interpreted in accordance with the intent of the Parties and shall not be interpreted against or in favor of either Grantor or Grantee;

(h) each Party acknowledges that neither Party has provided any legal or tax advice to the other regarding the transaction contemplated hereby or in connection with the execution of this Agreement or any ancillary documents hereto, and each of Grantor and Grantee has had the full opportunity to avail itself of legal and financial representation;

(i) if either Grantor or Grantee files an action for the enforcement or breach of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs;

(j) Grantee, at Grantee's expense, may record this Agreement upon the full execution hereof; and

(k) this Agreement may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

[Signatures to immediately follow.]

IN WITNESS WHEREOF, and intending to be legally bound, Grantor and Grantee have executed this Agreement.

WITNESSES:

Name: Wendell L. Skipper

Name: Tonia J Clemmons

GRANTOR:

Angeline D. Johnson,

Angeline D. Johnson
Name: Angeline D. Johnson

2360 Gurley Road
Loris, SC 29569
Tel.: (843) 756-8222

STATE OF SOUTH CAROLINA)
) SS:
COUNTY OF HORRY)

On this 8TH day of JUNE, 2010, before me, a Notary Public, the undersigned officer, personally appeared Angeline D. Johnson, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same as her free act and deed for the purposes and consideration therein expressed.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Tonia J Clemmons
Notary Public
My Commission Expires: 2/12/2013

WITNESSES:

Name: Christopher Bruenle

Name: Michael MacKey

GRANTEE:

Minerva Realty, LLC,
a Delaware limited liability company

John P. Lemmon
Vice President and General Counsel

1437 East Franklin Blvd., Box 194
Gastonia, NC 28054
Tel.: (704) 765-5027

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

On this 10th day of June, 2010, before me, a Notary Public, the undersigned officer, personally appeared John P. Lemmon, who acknowledged himself to be the Vice President and General Counsel of Minerva Realty, LLC, a Delaware limited liability company, and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing his name on behalf of said limited liability company by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public
My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
David C. Bruening, Notary Public
Whitehall Boro, Allegheny County
My Commission Expires Sept. 11, 2013
Member, Pennsylvania Association of Notaries

Exhibit "A"

The Property

In the County of Horry, South Carolina

Legal Description:

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

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

Also described as:

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

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

This being a portion of the 138.9 acre tract of land conveyed to Louise D. Strickland by Archie E. Johnson by deed conveying an undivided one-half (½) interest by deed dated November 13, 1972 and recorded in Deed Book 480 at page 564 in the records for Horry County. An undivided one-half (½) interest was conveyed to Louise D. Strickland by Archie E. Johnson by deed dated January 2, 1984 and recorded in Deed Book 843 at page 299 in the records for Horry County.

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

Known as: 200 Huggins Road a/k/a S Side of HWY 9, Loris, Horry County, South Carolina 29569

Parcel/Tax Number: 037-00-02-075

Exhibit "B"

The Easement

Those premises and access/utility easements previously leased pursuant to the Current Agreements as defined herein.

This Exhibit "B" may be replaced by a survey in accordance with the terms of the Agreement.

Exhibit "C"

Current Agreements

1. That certain Land Lease Agreement entered into by and between Grantor's predecessor-in-interest, Louise D. Strickland, as lessor and Vanguard Cellular Systems of South Carolina, Inc., a North Carolina corporation, as lessee, dated January 14, 1995, including any amendments thereto, if any.

2. Any other leases, licenses or agreements respecting the Easement to which Grantor is a party.

Exhibit C

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

AMERICAN TOWER, LLC,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-26-_____

SUMMONS

(BREACH OF CONTRACT)
JURY TRIAL DEMANDED

12 APR 10 PM 4:06

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above-entitled action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices at 1101 Johnson Avenue, Suite 300, Myrtle Beach, South Carolina 29577 within thirty (30) days after the date of such service, exclusive of the day of service. Should you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

David C. Slough
NEXSEN PRUET, LLC
1101 Johnson Avenue, Suite 300
Myrtle Beach, SC 29577
843.213.5400

Attorneys for Plaintiff
American Towers, LLC

April 10, 2012

Myrtle Beach, South Carolina

NPMB1:105227.1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	Case No. 2012-CP-26-_____
	)	
AMERICAN TOWERS LLC,	)	**COMPLAINT FOR DAMAGES, DECLARATORY AND INJUNCTIVE RELIEF, AND PUNITIVE DAMAGES**
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**JURY TRIAL DEMANDED**
ANGELINE D. JOHNSON, TRISTAR INVESTORS, INC. and MINERVA REALTY, LLC,	)	
	)	
Defendants.	)	

12 APR 10 PM 4:06

NOW COMES Plaintiff American Towers, LLC f/k/a American Towers, Inc., by and through its undersigned counsel, and for its Complaint states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff American Towers, LLC f/k/a American Towers, Inc. ("American Tower") is a limited liability company duly organized and existing under and by virtue of the laws of the State of Delaware, and which conducts business in the State of South Carolina, with its registered office address located at 2 Office Park Court, Suite 103, Columbia, South Carolina.

2. Defendant Angeline D. Johnson ("Landowner") is an individual residing in Myrtle Beach, Horry County, South Carolina.

3. Defendant TriStar Investors, Inc. ("TriStar") is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and conducts business in the State of South Carolina, with its registered office address located at 2 Office Park Court, Suite 103, Columbia, South Carolina.

4. Defendant Minerva Realty, LLC ("Minerva") is a limited liability company duly organized and existing under and by virtue of the laws of the State of Delaware, and conducts business in the State of South Carolina, with its registered office address located at 2 Office Park Court, Suite 103, Columbia, South Carolina.

5. Upon information and belief, Minerva is a wholly-owned subsidiary of TriStar. TriStar and Minerva are collectively referred to herein as TriStar/Minerva.

6. Jurisdiction is proper pursuant to South Carolina Code § 36-2-803 (a) because, among other things, the Defendants have transacted business within the state of South Carolina and Plaintiff's claims herein arise from such transactions. Venue is proper in Horry County, South Carolina pursuant to South Carolina Code § 15-7-30 because Defendant Landowner resides in Horry County, South Carolina.

GENERAL ALLEGATIONS – LEASE AGREEMENT FOR OPERATION OF THE SITE

7. Plaintiff incorporates herein by reference each and every previous allegation of this Complaint as though the same were fully set forth herein.

8. American Tower is in the business of owning and operating communications sites for the wireless and broadcast industries.

9. This action encompasses agreements between American Tower and Landowner relating to real property located in Horry County, South Carolina, in which American Tower has a contractual and business interest and Landowner's subsequent agreements with TriStar/Minerva that violate American Tower's agreements.

10. The underlying res of this suit is known as the "Finklea Site" and is located at the corner of Huggins Road and Route 9, Myrtle Beach, South Carolina 29572.

11. The fee simple interest in the Finklea Site is held by Landowner.

12. On or about January 14, 1995, Louise D. Strickland, then the owner of the Finklea Site, and Vanguard Cellular Systems of South Carolina, Inc. entered into a Land Lease Agreement for purposes of construction and operation of a telecommunications facility on the Finklea Site (the "Land Lease"). Landowner and American Tower are the successors-in-interest to the lessor and lessee, respectively, under the Land Lease. The term of the Land Lease, as amended, runs, as renewed, through January 13, 2030.

13. Pursuant to the Land Lease, American Tower has the right to operate the Finklea Site.

14. American Tower currently maintains and operates a communications tower at the Finklea Site. Several cellular telephone companies use the space on the tower to broadcast and transmit voice and data signals.

15. Paragraph 26 of the Land Lease reflects American Tower's expressed desire to maintain the confidentiality of the terms of its agreements with Landowner and provides in relevant part as follows:

> Confidentiality of Agreement Terms. Lessor agrees that all terms of this Agreement provided to Lessor shall remain confidential. No information is to be divulged by Lessor without the written consent of Lessee.

16. Paragraph 26 of the Land Lease reflects the effort American Tower has taken to protect the confidentiality of the terms of the Land Lease, included the lease rates.

TRISTAR/MINERVA'S INTERFERENCE

17. Prior to the expiration of American Tower's leasehold interest in the Finklea Site, TriStar/Minerva began negotiating with Landowner to obtain an interest in the Finklea Site.

18. TriStar/Minerva approached the Landowner prior to the expiration of the Land Lease. TriStar offered to pay Landowner in exchange for the granting of a "Communications Easement" and an assignment of the Landowner's beneficial rights with American Tower.

19. On or about June 10, 2010, Minerva and Landowner entered into an Exclusive Easement and Assignment Agreement ("Easement Agreement"). A copy of the Easement Agreement is attached as **Exhibit A** and incorporated herein by reference.

20. The Easement Agreement was recorded in Horry County on July 2, 2010.

21. The Easement Agreement purported to grant Minerva an exclusive, perpetual "Communications Easement" in the property where the Finklea Site is located,

> for the transmission and reception of any and all wireless communication signals and the construction, maintenance, repair, replacement, improvement, operation and removal of towers, antennas, cabinets, buildings, ice bridges, fences, gates and all related facilities [], and any and all activities and uses of the Communications Easement related to the operation of a wireless communications site . . . .

Exhibit A, at 2.

22. The Easement Agreement also purported to grant Minerva a transfer and assignment of all rights of Landowner under Landowner's various agreements involving the Finklea Site. *Id.*

23. The Easement Agreement makes specific reference to the Land Lease. *Id.* at Exhibit C.

24. The Easement Agreement was signed on behalf of Minerva by John Lemmon in TriStar's home of Allegheny County, Pennsylvania. John Lemmon is TriStar's General Counsel.

25. The assignment of Landowner's beneficial rights under the Land Lease is intended to give TriStar/Minerva the right to receive payments under the Land Lease and control over renewals of and extensions and modifications thereto. The "Communications Easement" is intended to give TriStar/Minerva the right to operate the Finklea Site.

MINERVA'S ALTER EGO

26. TriStar is merely an alter ego of Minerva through its unity of interest and ownership between the parent corporation, TriStar, and the subsidiary, Minerva; and, there is an inequitable result if the acts in question are treated as those of Minerva alone.

27. Minerva is a mere instrumentality through which TriStar conducts business such that TriStar is legally liable for the actions of Minerva. Specifically, the decision to target the Finklea Site was made by TriStar's "acquisition team" located in Pittsburgh, Pennsylvania. On information and belief, Minerva does not have any employees. All actions taken on behalf of Minerva are taken by TriStar employees.

28. TriStar has caused Minerva to engage in all of the wrongful acts alleged herein and controls Minerva to such a degree that Minerva is merely an instrumentality of TriStar.

29. As its alter ego, TriStar is liable for any damages and/or wrongful acts as alleged herein and committed by Minerva.

FOR A FIRST CAUSE OF ACTION
Declaratory Judgment Invalidating Easement Agreement
(Landowner/Minerva Realty, LLC)

30. Plaintiff incorporates herein by reference paragraphs 1 through 29 of this Complaint as though the same were fully set forth herein.

31. The Land Lease prohibited Landowner from disclosing the terms of the Land Lease to any person.

32. Upon information and belief, Landowner disclosed terms of the Land Lease and confidential information of American Tower to TriStar/Minerva.

33. The Easement Agreement between Landowner and Minerva specifically references the Land Lease and purports to assign the Land Lease to Minerva and to grant Minerva an easement in the Finklea Site. [See **Exhibit A.**]

34. An actual controversy exists between the parties inasmuch as TriStar/Minerva contends that it has a valid Communications Easement in the Finklea Site.

35. By reason of the foregoing, there is a case of actual controversy between the parties within the jurisdiction of this Court as required by South Carolina Code § 15-53-20, and the Court can declare the rights and other legal relations of the parties.

WHEREFORE Plaintiff American Towers LLC prays that this Honorable Court enter a declaratory judgment declaring the Easement Agreement to be null, void and of no effect and for an award of all costs and attorney fees so wrongfully incurred by Plaintiff in connection with the filing of this suit.

FOR A SECOND CAUSE OF ACTION
Breach of Contract (Landowner)

36. Plaintiff incorporates herein by reference paragraphs 1 through 35 of this Complaint as though the same were fully set forth herein.

37. American Tower did all, or substantially all, of the significant things that the Land Lease required it to do.

38. All conditions required for Landowner's performance have occurred.

39. Pursuant to the Land Lease, Landowner was not entitled to disclose the terms of its lease arrangements with American Tower regarding the Finklea Site to a third party.

40. Upon information and belief, Landowner breached the Land Lease by providing a copy of the Land Lease to TriStar/Minerva and by disclosing terms of the Land Lease and confidential information of American Tower to TriStar/Minerva.

41. As a direct and proximate result of Landowner's breach of the Land Lease, American Tower has suffered damages in excess of $25,000.00.

WHEREFORE Plaintiff American Towers LLC prays that this Honorable Court award it a judgment for actual damages and compensatory damages against Defendant Angeline D. Johnson in an amount in excess of $25,000.00, with interest thereon, together with all costs and attorney fees so wrongfully incurred by Plaintiff in connection with the filing of this suit.

FOR A THIRD CAUSE OF ACTION
Breach of South Carolina Trade Secrets Act, South Carolina Code § 39-8-10, *et seq.*
(TriStar Investors, Inc./Minerva Realty, LLC/ Angeline D. Johnson)

42. Plaintiff incorporates and realleges paragraphs 1 through 41 herein by reference as though the same were fully set forth herein.

43. The terms of American Tower's agreements with Landowner contained trade secrets within the meaning of South Carolina Code § 39-8-20(5), in that they included proprietary information about the value of American Tower's leasehold interests, from which American Tower derives independent economic value, is not readily ascertainable to the general public, and is the subject of reasonable efforts under the circumstances to maintain its secrecy.

44. These trade secrets had given American Tower an advantage over competitors who did not know or use them.

45. American Tower intended said information to be kept confidential between the contracting parties.

46. American Tower took reasonable steps to ensure that the terms of its agreements with Landowner, as well as information American Tower provided to Landowner in connection with the Land Lease, remained confidential by including Paragraph 26 of the Land Lease.

47. This information is of great value to American Tower; American Tower's competitors would find this information - especially the lease rates, costs and other proprietary information relating to the Finklea site - of great value.

48. TriStar/Minerva misappropriated American Tower's trade secrets by inducing and acquiring from Landowner lease agreements with American Tower, as well as confidential information that American Tower had provided to Landowner in connection with the Land Lease, despite having knowledge that the agreements prohibited disclosure to any third parties without American Tower's consent and having knowledge that such disclosure would violate the terms of the Land Lease.

49. Landowner knowingly participated in the misappropriation of American Tower trade secrets by producing copies of the lease agreements, as well as confidential information that American Tower had provided Landowner in connection with the Land Lease, to TriStar/Minerva.

50. As a direct and proximate result of their misappropriation, TriStar/Minerva/Landowner have injured American Tower by disclosing confidential information including the lease rates and profitability of said site.

51. TriStar/Minerva/Landowner's misappropriation of American Tower's trade secrets has unjustly enriched Defendants.

52. TriStar/Minerva/Landowner acted with reckless, willful or callous disregard of American Tower's rights and with malice, fraud or oppression towards American Tower, thereby entitling American Tower to an award of punitive damages in accordance with proof at trial.

WHEREFORE Plaintiff American Towers LLC prays that this Honorable Court award it a judgment for actual damages and compensatory damages against Defendants TriStar Investors, Inc., Minerva Realty, LLC and Angeline D. Johnson, in an amount in excess of $25,000.00, with interest thereon, punitive damages, together with all costs and attorney fees so wrongfully incurred by Plaintiff in connection with the filing of this suit, pursuant to South Carolina Code § 39-8-80(3).

FOR A FOURTH CAUSE OF ACTION
Permanent Injunction
(TriStar Investors, Inc./Minerva Realty, LLC/ Angeline D. Johnson)

53. Plaintiff incorporates and realleges paragraphs 1 through 52 herein by reference as though the same were fully set forth herein.

54. American Tower has a tangible interest in its trade secrets and confidential information, including information contained in and the terms of American Tower's Land Lease, as well as information that American Tower had provided to the Landowner in connection with the Lease Agreement.

55. In the event that a permanent injunction is not issued, American Tower will continue to be substantially and irreparably harmed.

56. American Tower has and will continue to suffer immediate and irreparable harm as a result of Defendants' actions.

57. American Tower does not possess an adequate remedy at law for the disclosure of its trade secrets and confidential information.

58. Based upon the facts as set forth above, American Tower has established its likelihood of success on the merits and that granting a permanent injunction against Defendants will not be a disservice to public policy but, on the contrary, will enhance public policy.

59. Further, based upon the above, the injury to American Tower if a permanent injunction is not entered greatly outweighs any injury to the Defendants if the injunction is issued.

WHEREFORE Plaintiff American Towers LLC prays that this Honorable Court:

a. issue a permanent injunction prohibiting all Defendants, their employees, agents, affiliates, representatives, successors, assigns and all persons who act in concert with them be permanently enjoined from (a) disclosing any copies of or terms of American Tower's agreement with Landowner with any party; and (b) disclosing any American Tower confidential information with any party;

b. issue a permanent injunction requiring TriStar Investors, Inc. and Minerva Realty, LLC, and their employees, affiliates,

representatives, and assigns and all persons who act in concert with them: (a) to destroy and permanently delete any and all copies of any American Tower agreements with Landowner, and any portions thereof; and (b) to destroy and permanently delete all American Tower confidential information and trade secrets, including any and all of the terms of American Tower agreements with Landowner;

c. award all costs and attorney fees incurred by Plaintiff in connection with the filing of this suit; and

d. grant any other and further relief that the Court deems just and reasonable under the circumstances.

Respectfully submitted,

David C. Slough
NEXSEN PRUET, LLC
1101 Johnson Avenue, Suite 300
Myrtle Beach, SC 29577
803.213.5400

Attorneys for the Plaintiff

April 10, 2012
Myrtle Beach, South Carolina

Exhibit A

PREPARED BY AND
WHEN RECORDED MAIL TO:

iMortgage Services LLC
2570 Boyce Plaza Road
Pittsburgh, PA 15241

Instrument#: 2010000066785, DEED BK: 3468 PG: 3454 DOCTYPE: 062 07/02/2010 at 04:30:00 PM, 1 OF 12 COUNTY STAMPS: $106.15 STATE STAMPS: $250.90 BALLERY V. SKIPPER, HORRY COUNTY. SC REGISTRAR OF DEEDS

_____ SPACE ABOVE THIS LINE FOR RECORDER'S USE _____

EXCLUSIVE EASEMENT AND ASSIGNMENT AGREEMENT

THIS EXCLUSIVE EASEMENT AND ASSIGNMENT AGREEMENT ("Agreement") is made as of the 10th day of June, 2010 ("Effective Date") by and between **ANGELINE D. JOHNSON** ("Grantor") and **MINERVA REALTY, LLC**, a Delaware limited liability company ("Grantee"). Grantor and Grantee are at times collectively referred to hereinafter as the "Parties" or individually as a "Party".

RECITALS:

WHEREAS, Grantor is the owner of that certain real property located at 200 Huggins Road a/k/a S Side of HWY 9, Loris, Horry County, South Carolina 29569 ("Property"), which Property is more particularly described on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Grantor and Grantee have entered into that certain Letter Agreement last executed the 18th day of March, 2010 ("Letter Agreement"), in which Grantor has agreed to grant to Grantee certain easement rights to a portion of the Property in accordance with the terms herein.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars ($10.00) in hand paid, the mutual promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Grantor and Grantee hereby agree and covenant to and with each other the following:

1. **Recitals.** The recitals set forth above and the Letter Agreement are incorporated herein by reference and made a part of this Agreement.

2. **Grant of Easement.**

(a) Grantor grants, bargains, sells, transfers and conveys to Grantee:

(i) an easement in, to, under and over the portions of the Property, substantially as shown or described on Exhibit "B" attached hereto ("Communication Easement"), for the transmission and reception of any and all wireless communication signals and the construction, maintenance, repair, replacement, improvement, operation and removal of towers, antennas, cabinets, buildings, ice bridges, fences, gates and all related facilities (collectively "Facilities"), and any and all activities and uses of the Communication Easement related to the operation of a wireless communications site, which Communication Easement shall be exclusive except for any contrasting rights granted prior to the Effective Date via the leases or other agreements listed on Exhibit "C" ("Current Agreements") and exclusive upon the expiration or earlier termination of such Current Agreements; and

(ii) non-exclusive easements in, to, under and over portions of the Property ("Access and Utility Easements") for ingress and egress to and from the Communication Easement and a publicly dedicated roadway, and for the installation, repair, replacement, improvement, maintenance and removal of utilities providing service to the Communication Easement and the Facilities, and any related activities and uses; the Communication Easement and Access and Utility Easements are collectively referred to herein as the "Easement".

(b) The Parties agree that the Easement shall be modified to include any additional areas utilized by the lessee or any assignees or sublessees under the Current Agreements at the time of expiration of such respective Current Agreements if any such areas extend beyond those areas described in Exhibit "B". Such additional areas may be documented by a survey acquired by Grantee at Grantee's cost. Grantee shall have the right to replace any site plan or description provided in Exhibit "B" or on any ancillary documents with a survey.

3. **Assignment of Current Agreements.** Grantor transfers and assigns to Grantee, as of the Effective Date, any and all of its beneficial rights, title and interest in, to and under the Current Agreements, including but not limited to (i) the right to receive any and all rents and other monies due to Grantor thereunder, including from any assignees or sublessees, and on any and all extensions thereof, and (ii) the right to modify, extend, expand and/or terminate the Current Agreements. Grantor covenants and agrees that Grantor remains the fee owner of the Property and Grantor is not assigning and shall continue to comply with all of Grantor's obligations as lessor under the Current Agreements. Notwithstanding the foregoing, to the extent that any of the Current Agreements require any assignee of Grantor's rights to assume all obligations of Grantor under the Current Agreements, then (i) Grantor also transfers and assigns to Grantee, as of the Effective Date, any and all of its obligations in, to and under the Current Agreements, (ii) Grantee assumes, recognizes and is responsible for all such obligations, and (iii) Grantor shall cooperate with Grantee to facilitate Grantee's fulfillment of all such obligations, and Grantor shall indemnify, defend and hold harmless Grantee for any performance of Grantee of such

obligations that reasonably relate to the Property outside of the Easement. During the term of the Current Agreements, maintenance of the Easement is the responsibility of any tenants under the Current Agreements. In the event of a default by a tenant with respect to any maintenance obligation under any of the Current Agreements, Grantee shall not be responsible for such default nor obligated to cure or seek remedy for such default, and Grantor may pursue such remedies from the defaulting tenant as may be available to Grantor under the Current Agreements or at law or equity.

4. Use of Easement. Grantor shall provide to Grantee the quiet enjoyment and use of the Easement. Grantee shall have the exclusive, unrestricted right to lease, sublease, license, transfer, assign or encumber, in whole or in part, or grant the use of the Easement and/or its rights under this Agreement to any third parties, including but not limited to (i) communication service providers or tower owners or operators, (ii) any lessee, sublessee or licensee under the Current Agreements, (iii) the affiliates, subsidiaries, parents, successors, purchasers in whole or in part, agents, contractors, invitees and employees of Grantee, and (iv) Grantee's present or future lessees, sublessees or licensees (collectively "Customers"). Grantee and its Customers shall have the right to enter and access the Easement at any time, twenty-four (24) hours a day, seven (7) days a week.

5. Term. This Agreement and the Easement shall be perpetual commencing on the Effective Date, except if terminated in accordance with the terms herein.

6. Termination. In the event Grantee and Customers cease all use of all portions of the Easement for a period of more than five (5) consecutive years (for reasons other than casualty or force majeure) subsequent to the expiration or earlier termination of the Current Agreements, the Easement shall be deemed abandoned. Limited or partial use of the Easement by Grantee or any Customers shall not be deemed a surrender or abandonment of the Easement or any unused portion thereof, nor prevent Grantee from benefiting from the full use and enjoyment of the entirety of the Easement. Grantee may abandon the Easement upon thirty (30) days notice to Grantor. This Agreement may not be terminated by Grantor. Upon abandonment, this Agreement shall be terminated, and Grantee and Grantor shall cooperate in the execution and recordation of such documents reasonably required to evidence such termination.

7. Improvements. Grantee and its Customers may, at their discretion and expense, construct improvements in, to, under and over the Easement, all of which shall be deemed part of the Facilities. The Facilities shall remain the personal property of Grantee and its Customers, as applicable, and Grantor shall possess no right, title or interest therein. Grantee and its Customers may from time to time temporarily utilize additional portions of the Property contiguous to the Easement to the minimum extent necessary for installation, maintenance or other work on the Facilities, or for the placement of mobile facilities to maintain service during periods of repair or replacement of the Facilities. Grantor shall be under no obligation to reserve any such additional Property. Any such additional Property that is used hereunder shall be returned to the condition which existed prior to such use promptly upon the completion of such use.

8. Taxes. Upon the expiration of the Current Agreements, Grantee shall thereafter be responsible for all taxes directly attributable to the Facilities as evidenced by an applicable tax bill. Grantor shall pay all other taxes that are not directly attributable to the Facilities. To the extent that Grantor shall fail to pay timely any taxes on the Property for which Grantor is responsible, Grantor shall (i) waive all future payments due from Grantee, if any, and (ii) at Grantee's election, subdivide the Easement and any additional space necessary to satisfy any minimum lot requirements from the Property and convey such subdivided parcel to Grantee, and Grantor hereby irrevocably constitutes and appoints Grantee as its true and lawful attorney-in-fact, with full power of substitution, to apply for and obtain

such subdivision and conveyance. Grantor shall reimburse Grantee for all costs incurred in obtaining such subdivision and conveyance.

9. **Exclusive Use.** Except for Grantee's use or the use of any Customers or third parties with Grantee's permission or as otherwise permitted by the Current Agreements, no portion of the Property or any other property owned by Grantor and located within a five (5) mile radius of the Property shall be used for the purpose of or in connection with communications towers and/or facilities without the prior written consent of Grantee, which consent may be withheld in Grantee's sole discretion. Grantor shall not install or permit to be installed any structure or equipment which causes measurable interference to the equipment of Grantee or its Customers, or otherwise permit any portion of the Property to be used in a manner which materially interferes with the operations of Grantee and/or any Customers. Grantor and Grantee acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this section and therefore, Grantee shall have the right to specifically enforce the provisions herein in a court of competent jurisdiction.

10. **Environmental Covenants and Indemnity.** Grantor represents that it has no knowledge of any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation ("Hazardous Materials") locafed on, under or about, or otherwise affecting, the Property or the Easement. Neither Grantor nor Grantee will introduce or use any Hazardous Materials on, under or about the Property or the Easement in violation of any applicable law or regulation. Grantor and Grantee shall indemnify, defend and hold the other Party harmless from and against any and all demands, claims, enforcement actions, costs and expenses, including reasonable attorneys' fees, arising out of the presence of Hazardous Materials upon or affecting the Property or the Easement and caused by the indemnifying Party. The foregoing indemnity shall survive any termination of this Agreement.

11. **General Indemnity.** Grantor and Grantee shall each indemnify, defend and hold the other harmless against any and all costs and claims of liability or loss arising (i) due to the breach of any representation, warranty or covenant of such indemnifying Party set forth herein, or (ii) out of the use and/or occupancy of the Property or the Easement by the indemnifying Party, except to the extent arising from the negligence or intentional misconduct of the indemnified Party. The foregoing indemnity shall survive any termination of this Agreement.

12. **Transfer of the Property; Assignment.** The provisions and covenants contained in this Agreement shall run with the land and shall bind and inure to the benefit of the Parties and their respective successors, heirs and assigns. Should Grantor sell or otherwise convey all or any part of the Property to a purchaser or transferee other than Grantee, such sale or conveyance shall be under and subject to the terms contained in this Agreement and Grantee's rights hereunder. Notwithstanding the foregoing, the Easement is for the benefit of Grantee, its Customers, successors and assigns, rather than for the benefit of any other tract of land, and may be assigned freely, in whole or in part, by Grantee and its successors and assigns.

13. **Mortgages.** At Grantor's option, this Agreement and the Easement shall be subordinate to any mortgage or other security interest by Grantor which from time to time may encumber all or part of the Easement so long as Grantor's lender shall agree in writing in a form reasonably acceptable to Grantee that such lender will not disturb Grantee's possession and rights under this Agreement so long as Grantee remains in compliance with this Agreement.

14. **Secured Parties.** Grantee shall have the unrestricted right to assign, mortgage or grant a security interest in Grantee's interest in and to this Agreement and the Easement, and may assign this Agreement and the Easement to any such assignees, mortgagees or holders of security interests, including

their successors and assigns ("Secured Parties"). If Grantee fails to perform any of its obligations under this Agreement, Grantor agrees to provide written notice of such default to Grantee and all Secured Parties of which Grantor has been notified, and to give Grantee and/or such Secured Parties the right to cure such default within a period of not less than sixty (60) days from receipt of the written default notice.

15. Estoppel Certificate. Each Party shall, within ten (10) days after request by the other Party, execute and deliver to the requesting Party, or the Party designated by the requesting Party, a statement certifying (i) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, stating the modifications and that the modified Agreement is in full force and effect); (ii) whether either Party is in default in performance of any of its obligations under this Agreement, and, if so, specifying each default; and (iii) any other information reasonably requested concerning this Agreement.

16. Condemnation. In the event of any condemnation of the Easement in whole or in part, Grantee shall be entitled to file claims against the condemning authority for, and to receive, the entire value of the portion of the Property so taken on which the Easement is located, business dislocation expenses and any other award or compensation to which Grantee may be legally entitled.

17. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given one (1) day after posting with a nationally recognized overnight courier service, or the earlier of receipt or ten (10) days after posting by registered or certified mail, return receipt requested, to the addresses of Grantor and Grantee as set forth on the signature page. Either Party may change its notice address by providing notice as set forth herein.

18. Miscellaneous.

(a) This Agreement, including all Exhibits attached hereto and the Letter Agreement which is incorporated herein by reference, constitutes the entire agreement and understanding of Grantor and Grantee with respect to the subject matter of this Agreement, and supersedes all offers, negotiations and any other written or verbal agreements, and any amendments to this Agreement must be in writing and executed by both Parties;

(b) this Agreement is governed by the laws of the State in which the Property is located;

(c) in the event that either Party fails to pay when due any taxes, loans, judgments or payments attributable to or encumbering the Property, Easement or this Agreement, the other Party shall have the right, but not the obligation, to pay such sums on behalf of the non-paying Party, and the non-paying Party shall thereafter reimburse the paying Party for the full amount of such sums paid within five (5) business days of the non-paying Party's receipt of an invoice from the paying Party, or at the Paying party's option the paying Party may offset such amount, plus reasonable interest thereon, against any sums due from the paying Party to the non-paying Party;

(d) if any term of this Agreement is found to be void, invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the minimum extent necessary to be operative, valid and enforceable to most closely reflect the intent of the Parties as expressed herein, or if such modification is not

practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect;

(e) the Parties shall perform, execute and/or deliver promptly any and all such further acts and documents as may be reasonably required to consummate and continue to effectuate the transaction contemplated hereby, including any documents required for Grantee to acquire title insurance on the Easement;

(f) the section headings of this Agreement have been inserted for convenience of reference only, and shall in no way modify or restrict the terms of this Agreement;

(g) this Agreement has been negotiated at arm's-length, and in the event of any ambiguity in any of the terms and provisions, this Agreement shall be interpreted in accordance with the intent of the Parties and shall not be interpreted against or in favor of either Grantor or Grantee;

(h) each Party acknowledges that neither Party has provided any legal or tax advice to the other regarding the transaction contemplated hereby or in connection with the execution of this Agreement or any ancillary documents hereto, and each of Grantor and Grantee has had the full opportunity to avail itself of legal and financial representation;

(i) if either Grantor or Grantee files an action for the enforcement or breach of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs;

(j) Grantee, at Grantee's expense, may record this Agreement upon the full execution hereof; and

(k) this Agreement may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

[Signatures to immediately follow.]

IN WITNESS WHEREOF, and intending to be legally bound, Grantor and Grantee have executed this Agreement.

WITNESSES:

Name: WILLIAM L. SKIPPER

Name: Tonia J Clemmons

GRANTOR:

Angeline D. Johnson,

Angeline D. Johnson
Name: Angeline D. Johnson

2360 Gurley Road
Loris, SC 29569
Tel.: (843) 756-8222

STATE OF SOUTH CAROLINA)
) SS:
COUNTY OF HORRY)

On this 8TH day of JUNE, 2010, before me, a Notary Public, the undersigned officer, personally appeared Angeline D. Johnson, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same as her free act and deed for the purposes and consideration therein expressed.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Tonia J Clemmons
Notary Public
My Commission Expires: 2/12/2013

WITNESSES:

Name: Christopher Bruenle

Name: Michael Markey

GRANTEE:

Minerva Realty, LLC,
a Delaware limited liability company

John P. Lemmon
Vice President and General Counsel

1437 East Franklin Blvd., Box 194
Gastonia, NC 28054
Tel.: (704) 765-5027

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

On this 10th day of June, 2010, before me, a Notary Public, the undersigned officer, personally appeared John P. Lemmon, who acknowledged himself to be the Vice President and General Counsel of Minerva Realty, LLC, a Delaware limited liability company, and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing his name on behalf of said limited liability company by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public
My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
David C. Bruening, Notary Public
Whitehall Boro, Allegheny County
My Commission Expires Sept. 11, 2013
Member, Pennsylvania Association of Notaries

Exhibit "A"

The Property

In the County of Horry, South Carolina

Legal Description:

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

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

Also described as:

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

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

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

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

Known as: 200 Huggins Road a/k/a S Side of HWY 9, Loris, Horry County, South Carolina 29569

Parcel/Tax Number: 037-00-02-075

Exhibit "B"

The Easement

Those premises and access/utility easements previously leased pursuant to the Current Agreements as defined herein.

This Exhibit "B" may be replaced by a survey in accordance with the terms of the Agreement.

Exhibit "C"

Current Agreements

1. That certain Land Lease Agreement entered into by and between Grantor's predecessor-in-interest, Louise D. Strickland, as lessor and Vanguard Cellular Systems of South Carolina, Inc., a North Carolina corporation, as lessee, dated January 14, 1995, including any amendments thereto, if any.

2. Any other leases, licenses or agreements respecting the Easement to which Grantor is a party.

Exhibit D

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
American Tower, LLC,	)	Civil Action No. 2012-CP-26-2912
Plaintiff,	)	
vs.	)	**ANSWER OF DEFENDANTS**
Angeline D. Johnson, TriStar Investors, Inc., and Minerva Realty, LLC	)	
Defendant.	)	

Angeline D. Johnson ("Mrs. Johnson"), TriStar Investors, Inc. ("TriStar"), and Minerva Realty, LLC ("Minerva"), Defendants, answering the Complaint of the Plaintiff, American Tower, LLC ("American Tower") would respectfully show the Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted, denied or explained is denied.

FOR A SECOND DEFENSE AND BY WAY OF ANSWER

2. Defendants admit, upon information and belief, the allegations of Paragraph 1.

3. Answering the allegations of Paragraph 2, Mrs. Johnson denies that she is a resident of Myrtle Beach but admits that she is a resident of Horry County, South Carolina.

4. Answering Paragraph 3, TriStar admits that it is a Delaware Corporation. Its principal place of business is in Pittsburgh, Pennsylvania.

5. Defendants admit the allegations of Paragraphs 4 and 5.

6. Answering the allegations of Paragraph 6, Defendants would admit that jurisdiction and venue is proper with this Court.

7. Answering Paragraph 7, these Defendants re-allege the foregoing defenses as if repeated here and verbatim.

8. Admit the allegations of Paragraph 8.

9. Answering Paragraph 9, these Defendants admit that this action involves real property agreements as to real estate interests in Horry County, South Carolina. All other allegations are denied and the Defendants specifically deny any violation of any agreement with American Tower.

10. Admit the allegations of Paragraphs 10 and 11.

11. Answering Paragraphs 12 and 13, the Defendants cross reference the Land Lease Agreement cited by Plaintiff and deny any allegations inconsistent with the language therein. Defendants specifically deny that the term of the Land Lease runs through January 13, 2030.

12. Admit, upon information and belief, the allegations of Paragraph 14.

13. Answering Paragraph 15, the Defendants cross reference the Land Lease Agreement cited by Plaintiff and deny any allegations inconsistent with the language therein.

14. Answering Paragraph 16, Defendants deny the allegations.

15. Admits Paragraphs 17 and 18.

16. Admit the allegations of Paragraphs 19 and 20.

17. Answering the allegations of Paragraphs 21, 22, and 23, these Defendants cross reference the language of the Easement Agreement and deny any allegations inconsistent therewith.

18. Answering Paragraph 24, these Defendants would show that the Easement Agreement was signed by John Lemmon on behalf of Minerva as its Vice President and General Counsel in Pennsylvania, its principal place of business. John Lemmon is also TriStar's General Counsel.

19. Answering Paragraph 25, these Defendants cross reference the Easement Agreement and deny any allegations inconsistent with the language therein. Defendants specifically deny that the Easement Agreement conveyed any rights to TriStar.

20. Deny the allegations of Paragraphs 26, 27, 28 and 29.

21. Answering the allegations of Paragraph 30, these Defendants re-allege the foregoing defenses as if repeated herein verbatim.

22. Deny the allegations of Paragraph 31.

23. Admit so much of Paragraph 32 that the terms of the Land Lease were disclosed but deny the remaining allegations.

24. Answering Paragraph 33, Defendants cross reference the Land Lease Agreement cited by Plaintiff and deny any allegations inconsistent with the language therein.

25. Answering Paragraph 34, Defendants assert that the Easement Agreement between Mrs. Johnson and Minerva is valid but otherwise deny the remaining allegations.

26. Answering Paragraph 35, the Defendants would respectfully request that the Court enter judgment in favor of the Defendants upon the First Cause of Action and enter a finding validating the Easement Agreement and dismissing Plaintiff's claims.

27. Answering the allegations of Paragraph 36, these Defendants re-allege the foregoing defenses as if repeated herein verbatim.

28. Defendants deny Paragraphs 37 and 38 and require specific proof thereof.

29. Deny Paragraphs 39, 40 and 41. The Defendants request that the Court enter judgment upon the Second Cause of Action in favor of the Defendants.

30. Answering the allegations of Paragraph 42, these Defendants re-allege the foregoing defenses as if repeated herein verbatim.

31. Deny the allegations of Paragraphs 43 through 52 and request the Court enter judgment in favor of the Defendants upon the Third Cause of Action.

32. Answering the allegations of Paragraph 53, these Defendants re-allege the foregoing defenses as if repeated herein verbatim.

33. Deny the allegations of Paragraphs 54 through 59 and request the Court enter judgment in favor of the Defendants upon the Fourth Cause of Action.

FOR A THIRD DEFENSE

34. Plaintiff's Complaint fails to state facts sufficient to constitute a claim from which relief can be granted against these Defendants.

FOR A FOURTH DEFENSE

35. These Defendants assert all applicable statutes of limitations as a bar to Plaintiff's claim for relief.

FOR A FIFTH DEFENSE

36. The Defendants assert any applicable statutes of repose as a bar to Plaintiff's claim for relief.

FOR A SIXTH DEFENSE

37. Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(8) of the S.C. Rules of Civil Procedure as a substantially similar matter is pending in separate litigation.

WHEREFORE, fully answered the Complaint of the Plaintiff's herein Defendants respectfully pray that the Complaint be dismissed with prejudice and for such other and further relief as the Court deems proper.

NELSON MULLINS RILEY & SCARBOROUGH , LLP

By: _____

Susan P. MacDonald
SC Bar No. 007943
E-Mail: susan.macdonald@nelsonmullins.com
3751 Robert M. Grissom Parkway / Suite 300
Post Office Box 3939 (29578-3939)
Myrtle Beach, SC 29577-3165
(843) 448-3500
Attorneys for Angeline D. Johnson. TriStar Investors, Inc., and Minerva Realty, LLC

Myrtle Beach, South Carolina

May 14, 2012

Exhibit E

STATE OF SOUTH CAROLINA COUNTY OF HORRY TRISTAR INVESTORS, INC., MINERVA REALTY, LLC, and ANGELINE JOHNSON, Plaintiffs, vs. THE HORRY COUNTY COUNCIL, and AMERICAN TOWER CORPORATION, Defendants.	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT C/A No. 2012-CP-26-8652

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AFFIDAVIT OF BRENDA G. HUGGINS

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

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

2. I am the owner of the real property located at 215 Huggins Road, Loris, South Carolina (the "Property"). My late husband Earl Huggins and I purchased the Property approximately 40 years ago. The Property is located approximately ½ mile away from the existing American Towers, LLC ("American Towers") telecommunications

tower.

3. On June 28, 2012, I signed a lease with American Towers whereby I am leasing American Towers a portion of my Property for the construction and operation of a telecommunications tower (the "Lease").

4. In addition to the Lease, on June 28, 2012, American Towers and I signed a Memorandum of Lease which memorializes certain public terms of the Lease. A true and correct copy of the Memorandum of Lease is attached to American Tower Corporation's Memorandum in Opposition to Plaintiffs' Application for Temporary Restraining Order and Preliminary Injunction (the "Memorandum").

5. On October 16, 2012, the Horry County Council considered and voted on American Towers' petition to relocate its current tower to my Property, resolution R-73-12 (the "Relocation Petition").

6. I attended that October 16, 2012 hearing of the Horry County Council.

7. Representatives for American Towers appeared at the October 16, 2012 hearing and presented evidence to the Horry County Council to support the Relocation Petition. As part of its presentation, American Towers discussed the design of the proposed relocated tower and the proposed placement of the tower on my Property – approximately 999 feet off of Huggins Road. American Towers proposes to plant approximately 111 trees around the relocated tower site.

8. Representatives for TriStar Investors, Inc. attended the October 16, 2012 hearing and objected to the Relocation Petition, presenting arguments to the Horry County Council.

9. Not only did TriStar have an opportunity to make a presentation at the

October 16, 2012 hearing, but after its presentation, members of the Horry County Council then posed open questions to the representatives of TriStar and American Towers.

10. Despite the potential harm to me, Plaintiffs did not provide me with notice of this lawsuit.

11. Under the provisions of the Lease, in the event that construction of the re-located tower onto my Property is slowed and/or if building permits are not granted by the County in a timely manner, American Towers may choose not to extend the duration of the Lease.

12. I will suffer harm if American Towers terminates the Lease due to construction delays.

Brenda B. Huggins

ANNITA K. BELL-REIMSNIDER NOTARY PUBLIC EXP. May 15, 2022 SOUTH CAROLINA

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

Annita K. Bell Reimsnider (L.S.)
Notary Public for South Carolina
My Commission expires: 5-15-2022

Exhibit J

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
3751 Robert M. Grissom Parkway / Suite 300 / Myrtle Beach, SC 29577-3165
Tel: 843.448.3500 Fax: 843.448.3437
www.nelsonmullins.com

J. Christopher Clark
Tel: 843.946.5625
chris.clark@nelsonmullins.com

October 23, 2012

Via Certified Mail and Electronic Mail

Tom Rice, Chairman
Horry County Council
1301 Second Ave
Conway, SC 29526

RE: Rehearing Request regarding Resolution R-73-12 to approve the permit to locate a telecommunications tower on Huggins Road off of West Hwy 9 Business

Dear Chairman Rice:

On behalf of Angeline Johnson and TriStar Investors, Inc., I write to respectfully request reconsideration of the Horry County Council's approval of Resolution R-73-12, which was heard on October 16, 2012. By this Resolution, American Tower ("ATC") sought approval for a Telecommunications Tower Permit to build a new tower very near to an existing, fully-functional tower. Ms. Johnson and TriStar also respectfully request a temporary halt to further permitting and approvals necessary for construction of the new tower. TriStar understands the extraordinary nature of this request, but believes it is essential to provide County Council with fully accurate and complete information regarding ATC's proposal.

ATC Misled the County Council as Part of a Bigger Anti-Competitive Scheme

ATC presented its application for a new tower as if it were merely a routine request to move a tower for technical reasons, but there is much more at stake here. ATC's attempt to build a new tower in Horry County is but one of many examples of anti-competitive conduct designed to monopolize the operation of wireless communications towers. To stop this conduct, TriStar filed suit against ATC in February in federal court in Dallas, Texas (Civil Action No.: 3:12-CV-499). That lawsuit is currently underway, and describes ATC's practice of threatening landowners with punishment if they do not renew their contracts with ATC.

ATC wants to build a new tower in Horry County precisely for this reason – to punish Ms. Johnson, the property owner at the existing tower site, for doing business with ATC's

With offices in the District of Columbia, Florida, Georgia, Massachusetts, North Carolina, South Carolina, Tennessee and West Virginia

competitor, TriStar. This tactic is no secret. In March of this year, ATC's CEO, James Taiclet, was asked what would happen to ATC's profits when ATC's leases with property owners come up for renewal. Mr. Taiclet told investment analysts that "[t]he leverage on our side is that we can move the tower nearby and go onto other leased land because we own the customer contract." When Mr. Taiclet was asked what the costs would be of moving a tower, he said "we would probably only do it as a demonstration." ATC's actions before the County Council are exactly that, a "demonstration," and the victim is Ms. Johnson.

This sort of "demonstration" against Ms. Johnson furthers ATC's pattern of anti-competitive behavior. Horry County is best served by fair and full competition for the right to operate wireless communications towers.

ATC promoted its anti-competitive agenda by intentionally misleading the County Council. There is no technical reason for relocating the existing tower, which already serves the wireless communications needs in the surrounding geographic area and will continue to do so for the foreseeable future. ATC presented no evidence that the wireless companies whose antennas are on the existing tower—Verizon Wireless, T-Mobile, and Horry Telephone Cooperative—need to relocate those antennas to a new tower.

In fact, as the County Council was informed during the meeting, there is another tower, already constructed, that (like the existing tower on Ms. Johnson's property) could also serve the same purposes as the tower ATC wants to build. This tower, built within the last year, is already the subject of litigation. Ms. Johnson and TriStar hope that the County Council will reconsider its decision to allow a third tower because that decision is likely to prompt further litigation.

ATC represented to the County Council's staff that ATC "ha[s] not been able to secure an extension to the lease for the existing tower site." This is false. ATC signed a 15-year lease extension with Ms. Johnson on October 15, 2007, which purported to extend the lease at the existing tower site until January of 2030. Even if ATC believes, as TriStar does, that this lease extension was invalid, ATC has not tried to replace it with a valid extension. Since June of 2010, TriStar has held an easement that gives TriStar "the right to modify, extend, expand, and/or terminate" the lease at the existing tower site. ATC has made no attempt to negotiate or secure an extension to the lease with TriStar.

Even if the lease with ATC is not extended, TriStar is fully prepared to operate the existing tower site. As the tower operator, TriStar will provide all of the services currently provided by ATC at substantially lower cost to the wireless companies and at greater benefit to Ms. Johnson, the property owner at the existing site. The existing tower can and will continue to serve the wireless communications needs of the surrounding area for the foreseeable future.

In light of the all of these facts, the County Council's decision to require that ATC remove the existing tower fits perfectly with ATC's anti-competitive scheme. It gives ATC leverage with

the wireless companies on the current tower, who must pack up and move to the new tower. On the other hand, if the existing tower remains in place, TriStar understands that Verizon Wireless, T-Mobile, and Horry Telephone Cooperative prefer to and will choose to remain on the existing tower.

ATC's Application Does Not Satisfy the Applicable County Ordinances

Because of ATC's anti-competitive purposes, it is particularly important here that the County Council carefully consider the applicable county ordinances. ATC's application does not satisfy the requirements of those ordinances. Section 1605 of the Horry County Zoning Ordinance states that "***no new freestanding telecommunication tower shall be permitted unless the applicant demonstrates that no existing telecommunication facility can accommodate the applicant's proposed use.***" ATC has not demonstrated and cannot demonstrate that "no existing telecommunication facility can accommodate the applicant's proposed use" because the existing tower is being used now for exactly the same purpose for which ATC proposes to use the new tower.

Article VII, Section 13-73(b) of the Horry County Code of Ordinances allows County Council to waive the requirements of Section 1605, but only if "such waiver is justified and the applicant can supply proof that co-location is not practical or warranted." To satisfy this requirement, section 13-73(c)(3) requires ATC to provide, among other things, "***[d]etailed information as to why the existing towers within two and one-half (2½) miles of the proposed tower . . . cannot reasonably be utilized for the proposed antenna installation.***" ATC provided the County Council with no information at all to show why the existing tower cannot be used in the future. Just the opposite is true. The longstanding and ongoing use of the existing tower demonstrates that the tower can continue to satisfy the wireless needs of the area.

Finally, because TriStar did not have the materials related to ATC's application until the afternoon of Friday, October 12, TriStar did not have sufficient time to prepare for and adequately present its position to County Council.

For all of these reasons, Ms. Johnson and TriStar believe the County Council was misinformed when it decided to approve ATC's application for approval of a new tower well within 2½ miles of the existing tower. ATC's construction of a new tower, if allowed, would be against the interests of the residents of Horry County and contrary to the laws of Horry County. Ms. Johnson and TriStar request that the County Council delay further action until it may consider all of the facts at issue and evaluate ATC's application in light of those facts and the applicable county ordinances. By this request, Ms. Johnson and TriStar hope to avoid the necessity of further legal proceedings.

Thank you for your attention to this request.

Very truly yours,

J. Christopher Clark

cc: Arrigo P. Carotti, Esquire via email
David Schwerd via email
Harold G. Worley via email
Brent Schulz via email
Marion Foxworth, III via email
Gary Loftus via email
Paul D. Price Jr. via email
Bob Grabowski via email
James R. Frazier via email
Carl Schwartzkopf via email
W. Paul Prince via email
Jody Prince via email
Al Allen via email

Exhibit K

A Communications Tower Replacement Application

Submitted to

Horry County, SC

By

TriStar Investors, Inc

November 13, 2012 Council Meeting

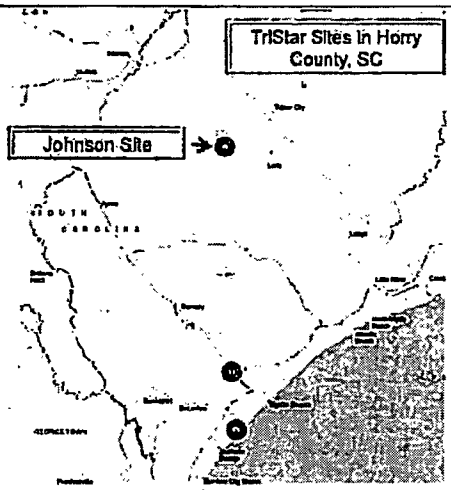
Submitted October 12, 2012

TriStar Investors Overview

- ★ TriStar Investors is a national tower site owner and developer
- ★ Principals of TriStar are wireless industry veterans who have been responsible for the design, development, operation and maintenance of tens of thousands of communications sites in the U.S. and around the world
- ★ TriStar has three sites in Horry County, South Carolina

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TriStar Investors Site Locations



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Johnson Site Proposed Communications Tower Replacement

- ★ Communications site is located at 200 Huggins Rd. approximately ¾ of a mile southeast of Finklea
- ★ Original tower built on Angeline Johnson property in 1996 by Vanguard Cellular Systems of South Carolina
- ★ Tower was bought by American Tower in 2000
- ★ TriStar acquires an interest in the tower site parcel in 2010 in partnership with Mrs. Johnson
- ★ Ground lease for existing tower expires in 2015
- ★ Current wireless service providers utilizing the tower are Horry Telephone Cooperative, Verizon and T-Mobile

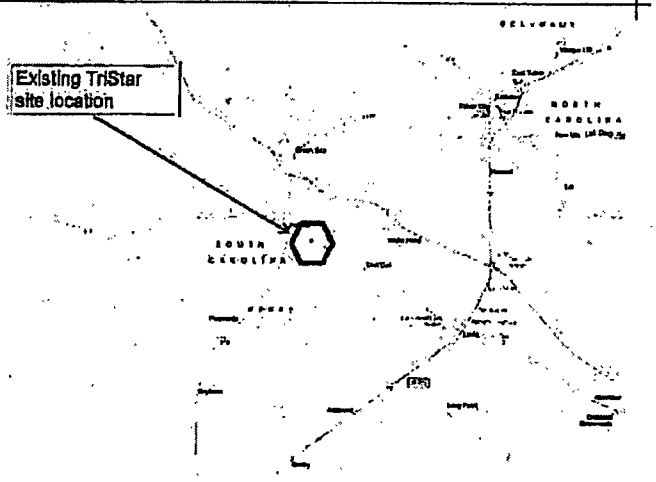
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Johnson Site Proposed Communications Tower Replacement

- TriStar is proposing to construct a replacement tower on the same parcel immediately adjacent to the existing Johnson site (~50' away), move all carrier equipment to the new tower then deconstruct and remove the old tower (industry term is "drop and swap")
- Replacement tower will be a self supporting lattice tower of exactly the same height (287') as the existing tower
- For a period of up to 120 days, the two towers will both be standing while the "swap" is completed
- TriStar is working diligently with the wireless service providers on the site to ensure no disruption to emergency 911 phone service during the transition

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Johnson Site Location Map



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Johnson Site Location Map



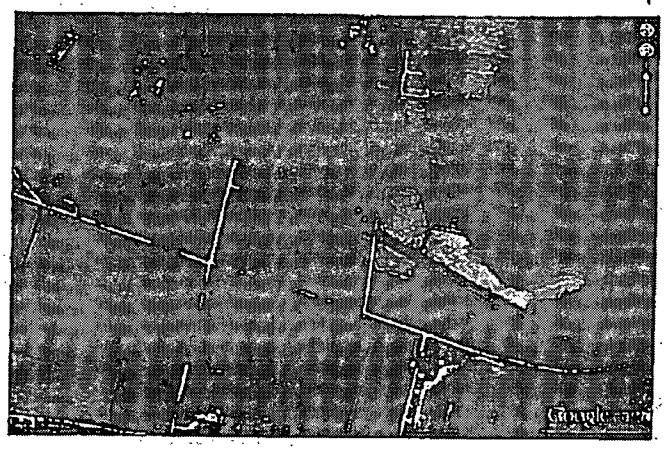
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Johnson Site Location Map



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Johnson Site Location Map



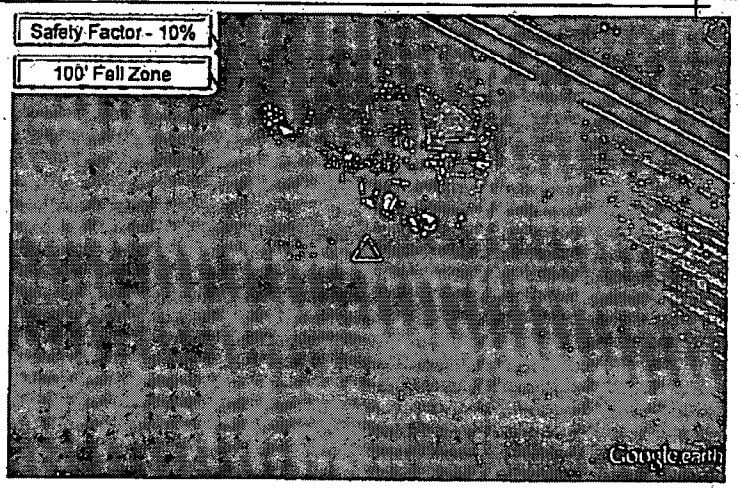
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Johnson Site Replacement Tower Location



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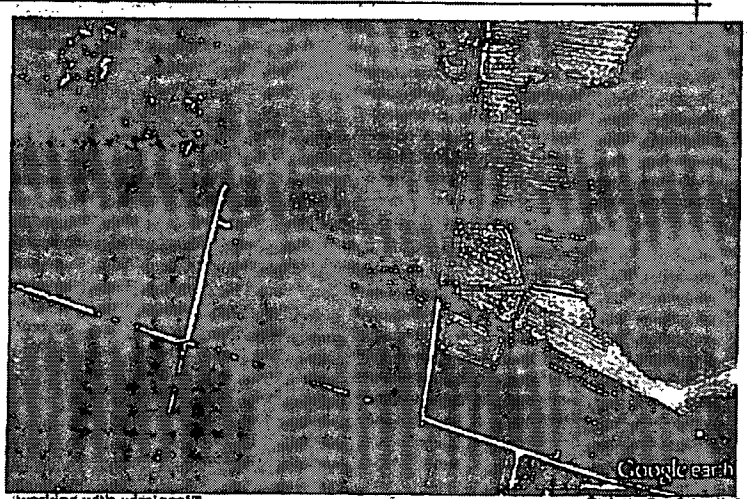
Johnson Site Replacement Tower 100' Fall Zone



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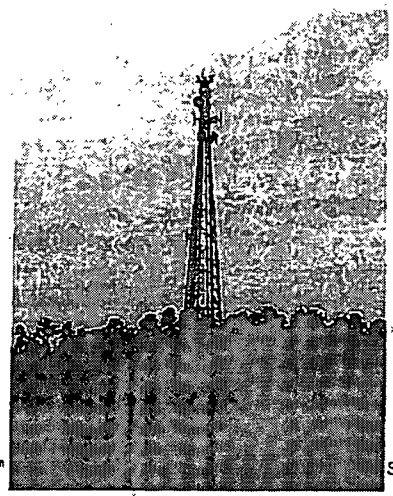
Viewshed Photos Of Johnson Site Location



working with wireless[sm]

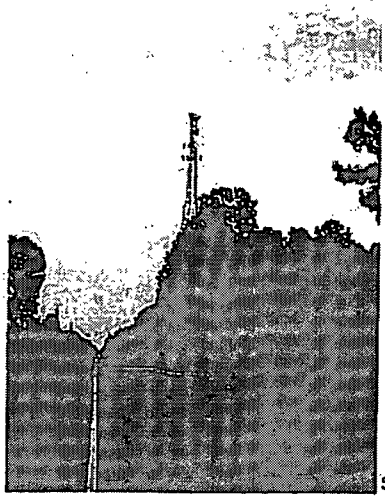
Strictly Confidential

Viewshed Photo #1



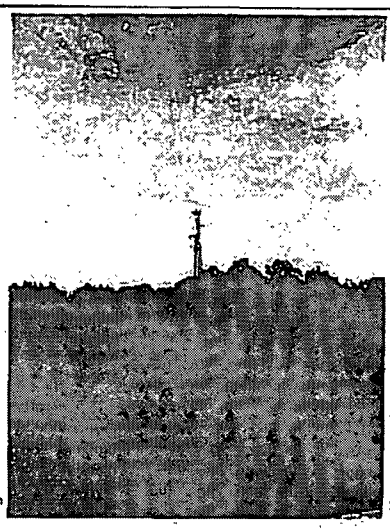
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Viewshed Photo #2

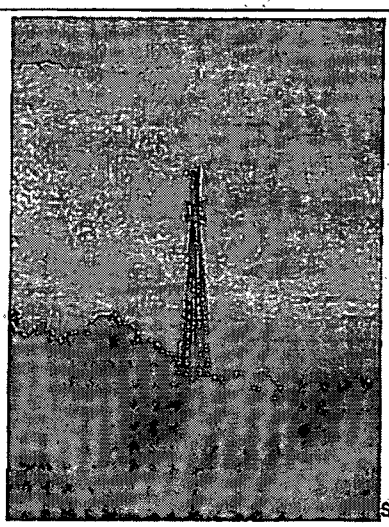


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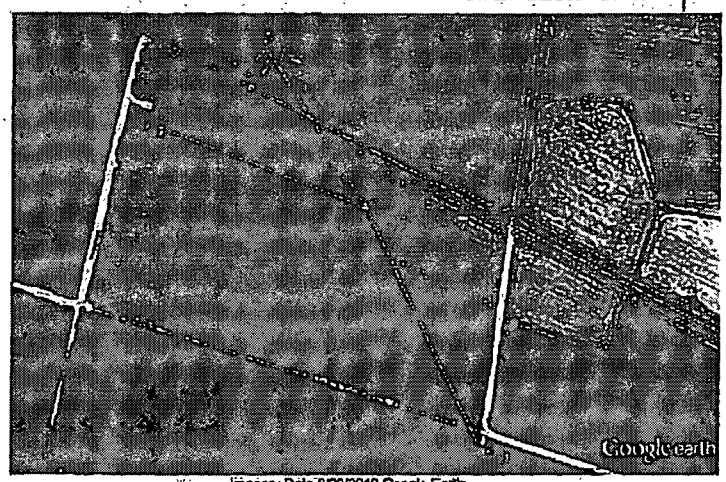
Viewshed Photo #3



Viewshed Photo #4

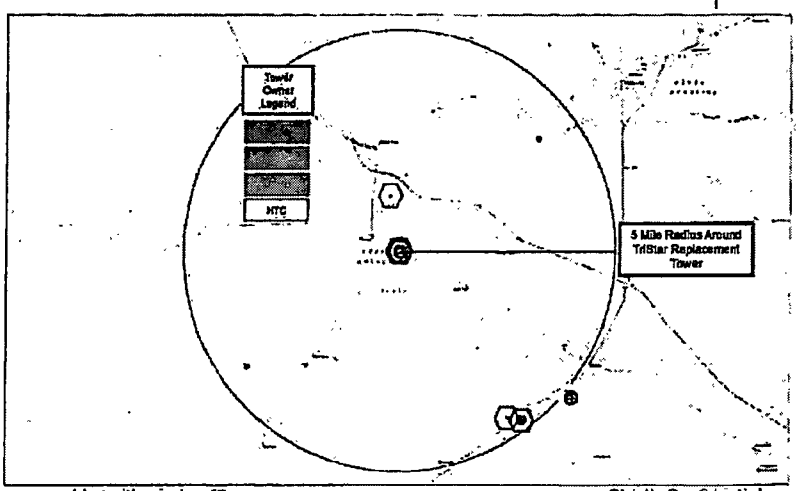


Distances To Nearby Improvements



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Wireless Communications Facilities Map

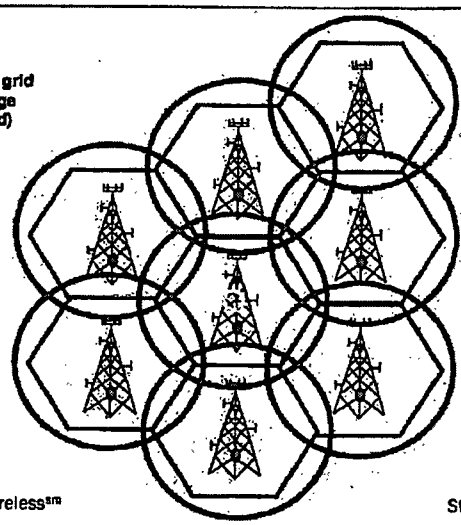


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How A Wireless Network Works

TRISTAR

Cell site "honeycomb" grid with coverage areas (in red)



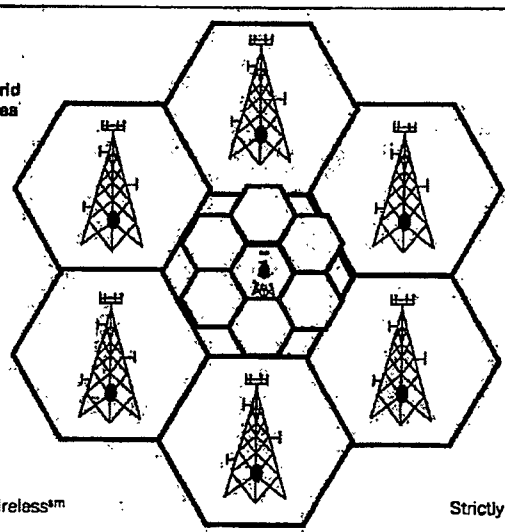
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How A Wireless Network Works

TRISTAR

Cell Site "honeycomb" grid with reduced area "split" cells



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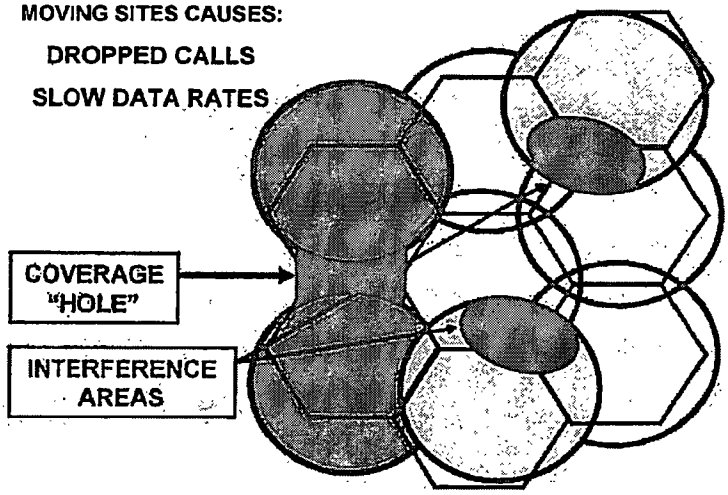
How A Wireless Network Works

TRISTAR

MOVING SITES CAUSES:

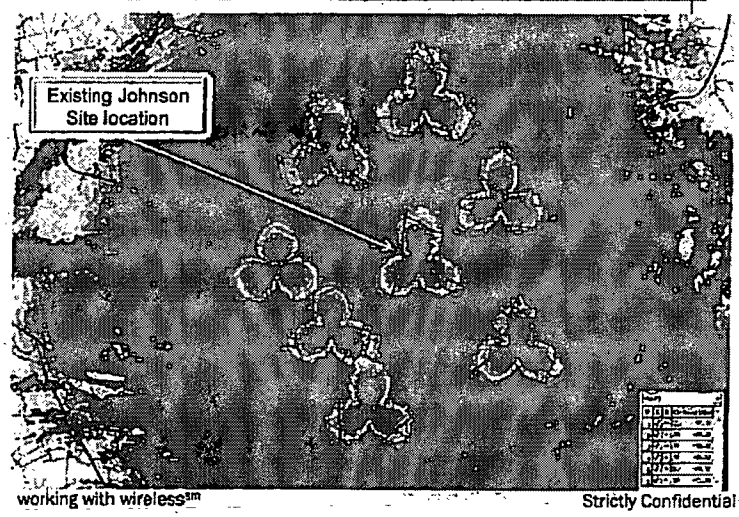
DROPPED CALLS

SLOW DATA RATES



Existing RF Coverage

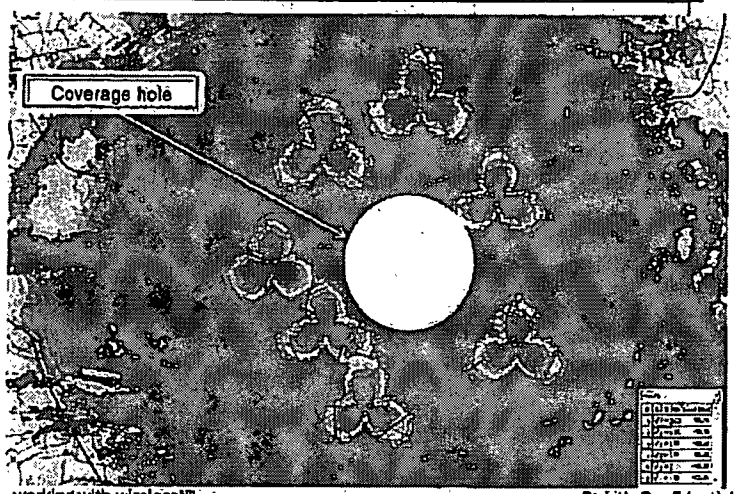
TRISTAR



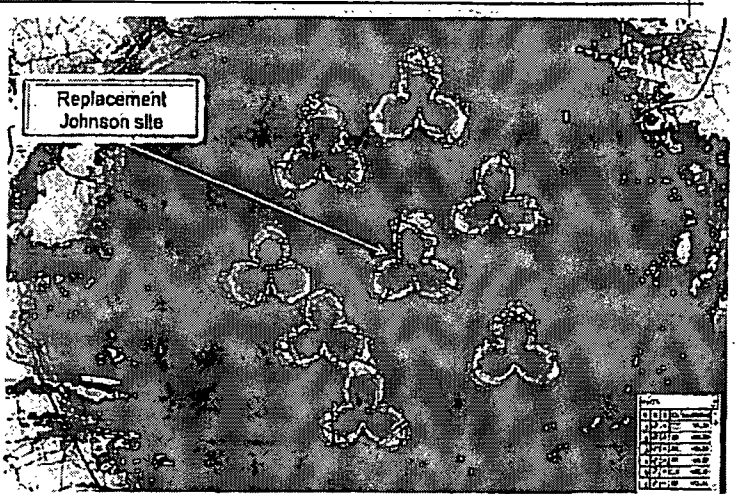
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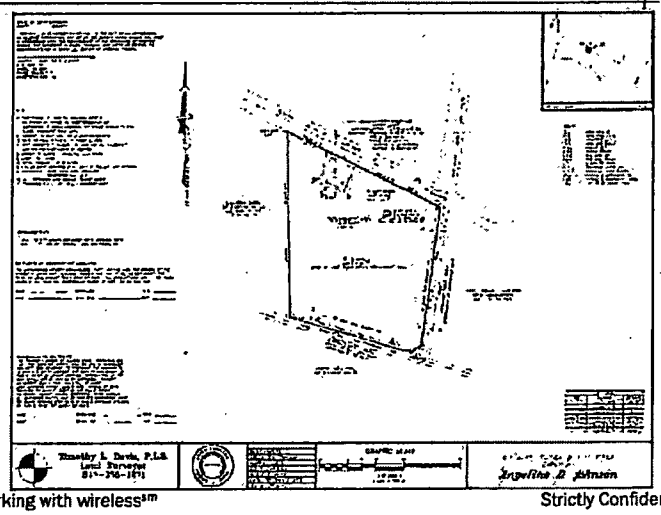
RF Coverage Impact Without Johnson Site



RF Coverage With Johnson Replacement Site

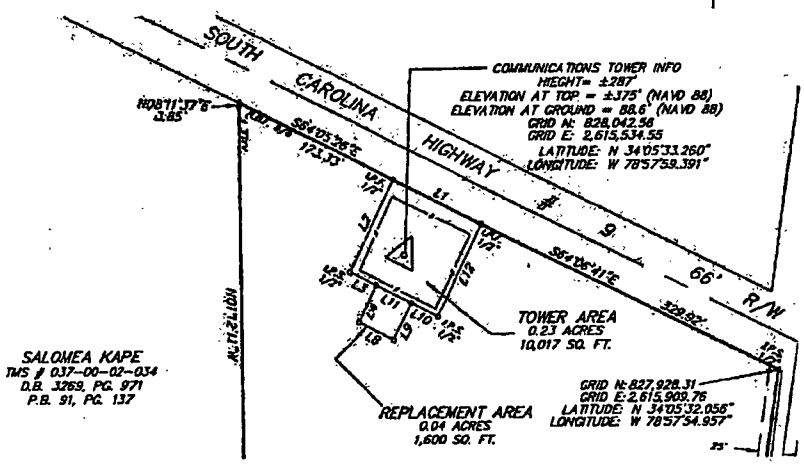


Johnson Replacement Site Plan



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Proposed Tower ~50' From Existing Tower



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Johnson Replacement Tower Specifications

TRISTAR

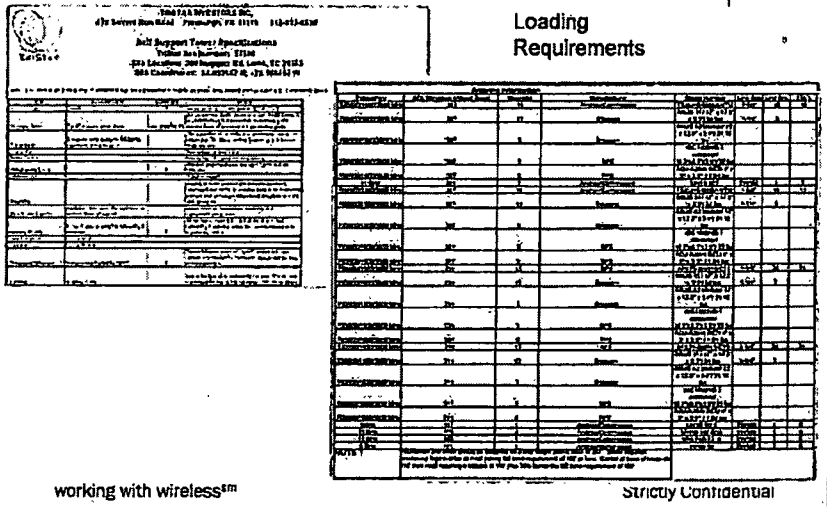
★ Replacement SST tower will be engineered to conform to the following design requirements:

1. Structural loading designed to latest TIA-222-Rev G Standard specifications
2. Additional carrier collocation loading designed into overall tower capacity
3. Break away leg design shall be specified to ensure the tower, in the unlikely event of a failure, will fall in a pre-planned zone designed to meet setback requirements and not fall off of the property or onto public roadways or adjacent parcels

Johnson Replacement Tower Specifications

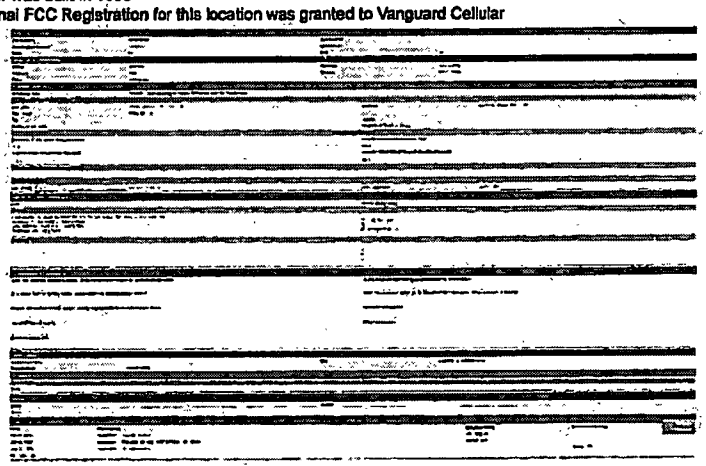
TRISTAR

Loading Requirements



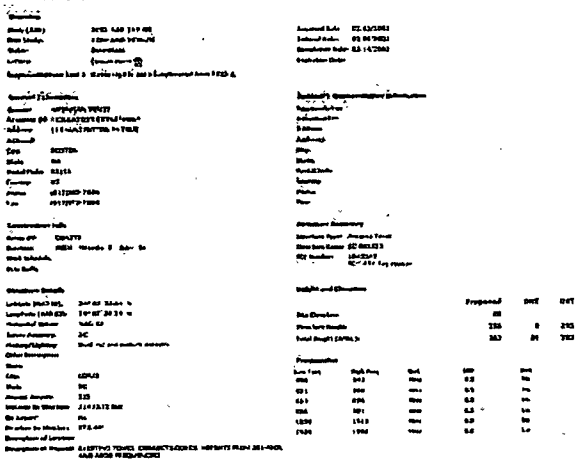
FAA and FCC Regulatory Compliance

- Tower was built in 1996
- Original FCC Registration for this location was granted to Vanguard Cellular



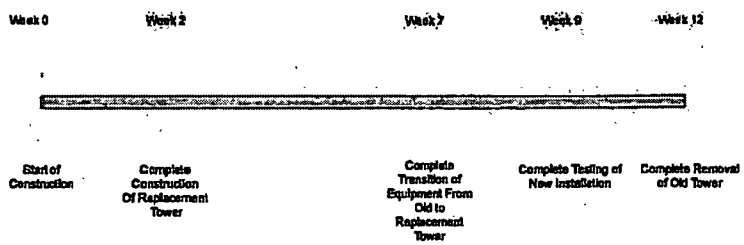
FAA and FCC Regulatory Compliance

1994/2003 FAA Form 7460-1 For the TriStar Tower Location



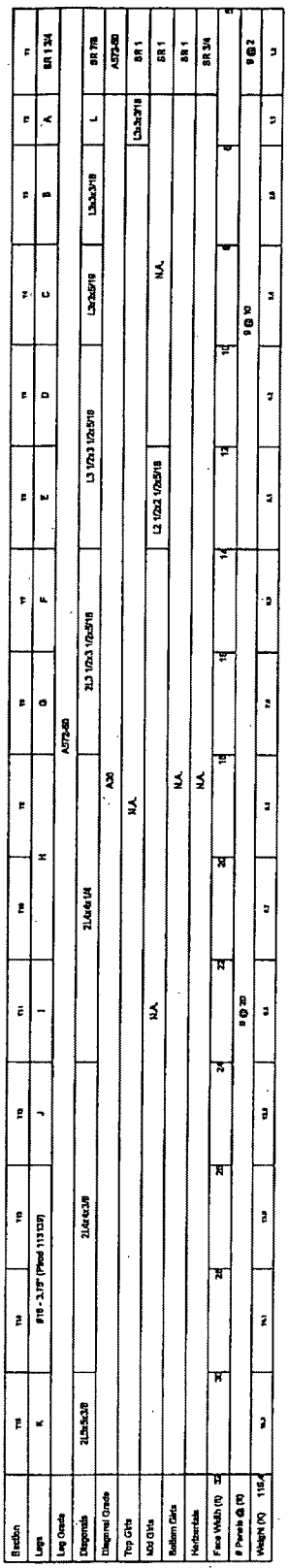
Johnson Replacement Tower
Drop and Swap Project Timeline

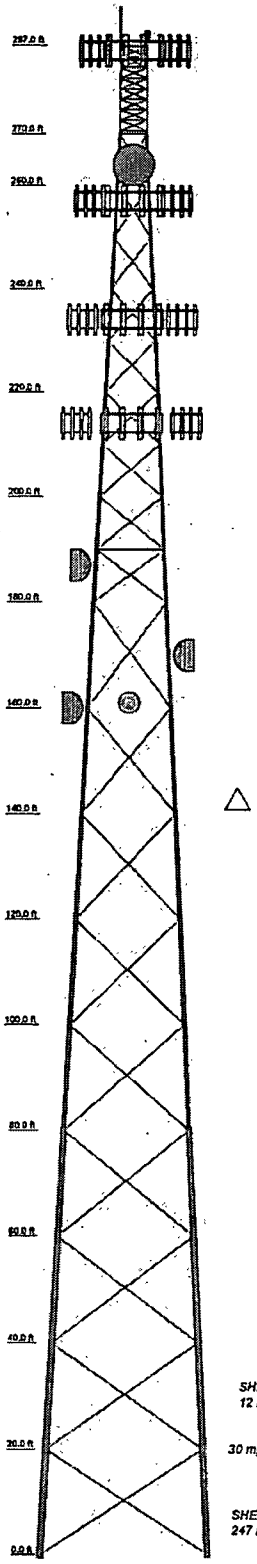
TRISTAR



working with wireless[sm]

Strictly Confidential





DESIGNED APPURTENANCE LOADING

TYPE	ELEVATION	TYPE	ELEVATION
Beacon	287	(4) APX75-866515-CT0	234
1/2" x 4" lightning rod	287	(4) 2" sch 40 x 96" pipe	234
(5) TBXLHB-6565A-VTM	287	(4) 2" sch 40 x 96" pipe	234
(5) TBXLHB-6565A-VTM	287	(4) 2" sch 40 x 96" pipe	234
(5) TBXLHB-6565A-VTM	287	(8) TMA (12"x12"x8")	234
(5) 2" sch 40 x 72" pipe	287	(8) TMA (12"x12"x8")	234
(5) 2" sch 40 x 72" pipe	287	(8) TMA (12"x12"x8")	234
(5) 2" sch 40 x 72" pipe	287	(4) Ericsson RRUS-11 800Mhz (17"x17.8" x9.2")	234
(6) TMA (12"x12"x8")	287	(4) Ericsson RRUS-11 800Mhz (17"x17.8" x9.2")	234
(6) TMA (12"x12"x8")	287	(4) Ericsson RRUS-11 800Mhz (17"x17.8" x9.2")	234
(6) TMA (12"x12"x8")	287	Ericsson RRUS A2 Module (15"x12.8" x3.4")	234
(4) Ericsson RRUS-11 800Mhz (17"x17.8" x9.2")	287	Ericsson RRUS A2 Module (15"x12.8" x3.4")	234
(4) Ericsson RRUS-11 800Mhz (17"x17.8" x9.2")	287	Ericsson RRUS A2 Module (15"x12.8" x3.4")	234
(4) Ericsson RRUS-11 800Mhz (17"x17.8" x9.2")	287	TMA (16.3"x8.7"x2.6")	234
Ericsson RRUS A2 Module (15"x12.8" x3.4")	287	TMA (16.3"x8.7"x2.6")	234
Ericsson RRUS A2 Module (15"x12.8" x3.4")	287	(3) RFS ACU-A20-N	234
TMA (16.3"x8.7"x2.6")	287	(3) RFS ACU-A20-N	234
TMA (16.3"x8.7"x2.6")	287	(3) RFS ACU-A20-N	234
TMA (16.3"x8.7"x2.6")	287	12' V Frame	234
(3) RFS ACU-A20-N	287	12' V Frame	234
(3) RFS ACU-A20-N	287	12' V Frame	234
(3) RFS ACU-A20-N	287	(4) APX75-866515-CT0	234
12' V Frame	287	(4) APX75-866515-CT0	214
12' V Frame	287	(4) APX75-866515-CT0	214
12' V Frame	287	(4) 2" sch 40 x 96" pipe	214
6' HP	264	(4) 2" sch 40 x 96" pipe	214
(5) TBXLHB-6565A-VTM	257	(4) 2" sch 40 x 96" pipe	214
(5) TBXLHB-6565A-VTM	257	(8) TMA (12"x12"x8")	214
(5) 2" sch 40 x 72" pipe	257	(8) TMA (12"x12"x8")	214
(5) 2" sch 40 x 72" pipe	257	(8) TMA (12"x12"x8")	214
(5) 2" sch 40 x 72" pipe	257	(4) Ericsson RRUS-11 800Mhz (17"x17.8" x9.2")	214
(6) TMA (12"x12"x8")	257	(4) Ericsson RRUS-11 800Mhz (17"x17.8" x9.2")	214
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(6) TMA (12"x12"x8")	257	Ericsson RRUS A2 Module (15"x12.8" x3.4")	214
(4) Ericsson RRUS-11 800Mhz (17"x17.8" x9.2")	257	Ericsson RRUS A2 Module (15"x12.8" x3.4")	214
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(4) Ericsson RRUS-11 800Mhz (17"x17.8" x9.2")	257	TMA (16.3"x8.7"x2.6")	214
Ericsson RRUS A2 Module (15"x12.8" x3.4")	257	TMA (16.3"x8.7"x2.6")	214
Ericsson RRUS A2 Module (15"x12.8" x3.4")	257	TMA (16.3"x8.7"x2.6")	214
Ericsson RRUS A2 Module (15"x12.8" x3.4")	257	(3) RFS ACU-A20-N	214
TMA (16.3"x8.7"x2.6")	257	(3) RFS ACU-A20-N	214
TMA (16.3"x8.7"x2.6")	257	(3) RFS ACU-A20-N	214
TMA (16.3"x8.7"x2.6")	257	12' V Frame	214
(3) RFS ACU-A20-N	257	12' V Frame	214
(3) RFS ACU-A20-N	257	12' V Frame	214
(3) RFS ACU-A20-N	257	(4) APX75-866515-CT0	214
12' V Frame	257	6' HP	197
12' V Frame	257	6' HP	170
12' V Frame	257	4' HP	181
(5) TBXLHB-6565A-VTM	257	6' HP	160
(4) APX75-866515-CT0	234		

SYMBOL LIST

MARK	SIZE	MARK	SIZE
A	#12ZO - 1.25" - 1.00" conn. (Pfrod 218705)	G	#12ZO -3.00"-0.875 -DB-0.625"-HP-Trans- (Pfrod 238707)
B	#12ZO - 1.50" - 1.00" conn. (Pfrod 224110)	H	#12ZO -3.25"-0.875 -DB-0.625"-HP- (Pfrod 238708)
C	#12ZO - 1.75" - 1.00" conn. (Pfrod 224113)	I	#12ZO -3.50"-0.875 -DB-0.625"-HP- (Pfrod 238714)
D	#12ZO - 2.00" - 1.25" conn. (Pfrod 224115)	J	#18/12 Transition - 3.50" (Pfrod 214554)
E	#12ZO - 2.25" - 1.25" conn. (Pfrod 194067)	K	#18 - 4.00" BASE ONLY(Pfrod 114747)
F	#12ZO -2.50"-0.875 -DB-0.625"-HP- (Pfrod 238705)	L	L2 1/2x2 1/2x3/16

MATERIAL STRENGTH

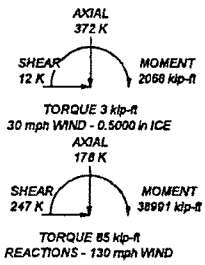
GRADE	Fy	Fu	GRADE	Fy	Fu
A572-50	50 ksi	65 ksi	A36	36 ksi	58 ksi

TOWER DESIGN NOTES

1. Tower is located in Horry County, South Carolina.
2. Tower designed for Exposure C to the TIA-222-G Standard.
3. Tower designed for a 130 mph basic wind in accordance with the TIA-222-G Standard.
4. Tower is also designed for a 30 mph basic wind with 0.50 in ice. Ice is considered to increase in thickness with height.
5. Deflections are based upon a 60 mph wind.
6. Tower Structure Class II.
7. Topographic Category 1 with Crest Height of 0.00 ft
8. TOWER RATING: 99.3%

ALL REACTIONS ARE FACTORED

MAX. CORNER REACTIONS AT BASE:
DOWN: 1465 K
UPLIFT: -1315 K
SHEAR: 157 K



TORQUE 3 kip-ft
30 mph WIND - 0.5000 in ICE

TORQUE 85 kip-ft
REACTIONS - 130 mph WIND

valmont STRUCTURES
Valmont Industries Inc.- Specialty Structures Group
1545 Pidco Drive
Plymouth, IN 46563
Phone: (574) 936-4221
FAX: (574) 936-6458

Job:	Quotation 200796-01
Project:	U-32.0 x 287' - Site 17688 - Loris, SC
Client: TriStar Investors, Inc.	Drawn by: na1 / App'd:
Code: TIA-222-G	Date: 10/12/12 / Scale: NTS
Path:	Dwg No. E-1

ms13

DRILLED PIER FOUNDATION SUMMARY

Tristar Investors
Loris, SC

U- 32.0 287
P- 200796-01

v 0.0

Pier Dimensions

Pier diameter, d_p:	6.50	ft
Depth, D:	69.0	ft
Ext. above grade, E:	0.50	ft
Bell diameter, b_d:	none	ft
Volume, V_c:	85.42	cy (per leg)

Reinforcement Design

Rebar	$m_{_c}$:	32	verticals
	size, $s_{_c}$:	11	equally spaced in 8" cage
Ties	size, $s_{_t}$:	5	w/ overlaps
	spacing:	18.00	" OC

Anchor Bolts

P/N:	125135	110" long, 2" diameter

Soil Information Per:

Assumed as dense sand

Site Parameters

Ultimate Bearing, B_c:	8.000	ksf
Ultimate Pp:	0.373	kcf
Ult. Skin Friction, SF:	1.226	ksf
Seismic Zone:	1	
Depth neglected, N:	6.00	ft
Neglect bottom, N_b:	none	ft

Material Properties

Steel tensile str, F_y:	60000	psi
Conc. Comp. str, F'_c:	4000	psi
Conc. Density, δ:	150.0	pcf
Clear cover, cc:	3.00	in

Backfill Compaction

Lift thickness:	8	in
Compaction:	95	%
Standard Proctor:	ASTM	D698

Additional Notes:

* No foundation modifications listed.
* No foundation notes given.

Tower design conforms to the following:

* *1997 Uniform Building Code (UBC)*
* *2000 & 2003 International Building Code (IBC)*
* *ANSI TIA-222-G*
* *Building Code Requirements for Reinforced Concrete (ACI 318-05)*

Foundation Loading

Load Case 1

Load Case 2 stress ratio: 99.3% mark up: 0.7%

Shear/Leg, S:	157.00 kips	x 1.007 =	158.10 kips
Moment/Leg, M:	0.00 ft-kips	x 1.007 =	0.00 ft-kips
Compression/Leg, C:	1466.00 kips	x 1.007 =	1476.28 kips
Uplift/Leg, U:	1316.00 kips	x 1.007 =	1324.21 kips

Load Case 3

Load Case 4

Load Case 5

View of Foundation

(not to scale)

