

Towers toppled by Zoning Appeals

Kingsmill cell dispute may wind up in court

By Cortney Langley

JAMES CITY — After five hours of debate and a 3-2 vote Thursday night, the Board of Zoning Appeals overturned approval for two cell towers in Kingsmill.

The vote could end a protracted dispute over twin 120-foot towers that has raged for more than a year. Or the county could file suit to uphold the earlier ruling.

"Our group, the Kingsmill Wireless Communications Advocacy Group, has felt, right from the start, that the cell tower plans proposed for our community did not comply with the [James City County] ordinance standards and it was gratifying to have this confirmed by the BZA," said David Neiman, a Kingsmill resident and tower opponent, in an interview Friday.

Zoning Appeals is a quasi-judicial body appointed by the Circuit Court to interpret contested zoning ordinances.

The plan to install the towers near the soccer field was approved by county Planning director Marvin Sowers last March. The towers did not require full legislative review by the Planning Commission or the Board of Supervisors.

Opponents challenged the decision. The county Development Review Commission reviewed and upheld the decision last June.

Now that Zoning Appeals has overturned that ruling, it's unclear if either the county or service providers AT&T or Verizon will challenge in Circuit Court.

"I don't know," said deputy county attorney Adam Kinsman in an interview

Friday. He defended the county's position Thursday night.

"Any aggrieved party may now appeal this decision," he said. "It could be either of the two cell phone companies, it could be both of them, it could be the county, it could be any other homeowner."



Kinsman said it's up to the Board of Supervisors whether to press the case. Doing so would create the unusual situation of the county suing one of its own committees.

Although three of the five members of the BZA live in Kingsmill, the vote did not break down along those lines, Fraley said.

Instead, the ordinance's "statement of purpose and intent" swayed members, he said. Where the Development Review Committee was constrained to deciding if the two towers met the definition of "camouflaged," the BZA had to consider the totality of the tower ordinance, including aesthetic considerations and effects on property values.

"We think that the BZA vote did two other important things that will potentially benefit the entire county," Neiman said. "It sent a message to wireless communications companies that the high standards of the [James City County] ordinances are going to be upheld strictly.

"And hopefully it will provide the impetus to take a serious look at alternate technologies and systems to provide wireless service."

He was referring to DAS, the distributed antenna system that has gained traction over cell towers.