

Suit filed to block cell tower denial

By Cortney Langley

JAMES CITY — The county's legal department filed suit Tuesday afternoon to overturn a recent Board of Zoning Appeals decision denying two cell towers in Kingsmill.

The county was joined in the action by cell carriers AT&T and Verizon, the Kingsmill Community Services Association and Busch Properties, all represented by LeClairRyan.

"The county... has a strong interest in the proper and uniform application of its zoning ordinances," wrote deputy attorney Adam Kinsman in the brief. "This improper decision of the [Board of Zoning Appeals] impedes this interest, and overturning the administrative approvals and denying the two camouflaged towers destroys the very goals that the wireless communication facility section of the county code was enacted to achieve."

Letting the BZA decision stand threatens the foundation of the cell tower ordinance, county attorney Leo Rogers said.

The ordinance was enacted in 1998 to allow for camouflaged towers no taller than 120 feet to be approved by-right in all zoning districts. The intent was to encourage smaller, camouflaged towers.

The planning director had the authority to review tower plans and confirm that they met the qualifications of a camouflaged tower. The system has worked well for more than 10 years, Rogers said. Some applications have been approved, others denied.

If the integrity of that ordinance is nullified, proliferation of larger, uncamouflaged towers will likely result, Rogers said.

The county also felt compelled to defend Planning's decision. The Development Review Committee and the Planning Commission supported the original approval.

Rogers said that another problem was imminent if only one cell company appealed the decision. The ordinance requires co-location of cell towers, and the AT&T and Verizon applications moved together as one.

Originally, only AT&T planned to appeal. If the cell company prevailed, Kingsmill would have one cell tower approved, while Verizon would likely move elsewhere. Keeping the two together is preferable to county officials.

Rogers said that while the case is unusual, it's an oversimplification to say that the county is suing one of its own. Although the BZA has quasi-judicial power in land cases, its members are appointed by the Circuit Court and its function is separate from legislative commissions.

While the county's brief is relatively short, AT&T's filing is more detailed. It argues that because Jack Fraley sat on the Development Review Committee and Planning Commission that originally approved the towers, the BZA hearing was basically an attack against his votes favoring the tower. It was a conflict of interest for him, they said, to then participate in the BZA hearing at all, much less to overturn his own previous vote.

The argument is signifi-

cant, since Fraley's BZA vote denied the towers last month.

KCSA's board of directors voted overwhelmingly to sue in a closed session Friday.

"We are hopeful the court will overturn the Board of Zoning Appeals decision and thereby restore what may be the only viable option to improve cellular services for Kingsmill residents," said KCSA vice president Ed Brown Tuesday.

Both KCSA and Busch have been working with AT&T and Verizon for more than a year on the tower deal.

"Busch Properties joined the appeal in support of the effort to improve cellular service at Kingsmill for the increased safety and convenience of our residents and guests," Robin Carson, Kingsmill's executive vice president and managing director, said in a statement. "Of those responding to a residents' poll, the majority of Kingsmill property owners are interested in improving cellular coverage in Kingsmill."