

5 suits want to overturn decision on cell towers

The Board of Zoning Appeals kills two proposed structures in the Kingsmill subdivision.

By DAN PARSONS

247-7840

January 24, 2009

JAMES CITY

Can you hear me now?

Five parties — including two cell phone companies and James City County — want to be heard in court, according to suits filed Tuesday over two disputed cell phone towers proposed for the Kingsmill subdivision.

The parties filed suit against the county's Board of Zoning Appeals over its Dec. 18 decision to kill plans for two cell phone towers in the affluent James City County neighborhood. Along with the county, similar suits were filed by Busch Properties, which owns the land where the towers would be built; cell carriers Verizon Wireless and AT&T, which would build the towers; and the Kingsmill Community Services Association, a group of neighborhood residents who favor the towers.

The suits, all nearly identical in their allegations, assert that the Board of Zoning Appeals erred when it overturned three previous decisions to allow the twin 120-foot towers — designed to look like extra-tall pines — to be built. The board is a quasi-judicial body appointed by the Circuit Court of Williamsburg/James City County.

The cell carriers' suits call the board's decision "deeply flawed" and say the board "failed to make any factual findings and conclusions, as required by state and federal law," to overturn the previous decisions. The county argues in its suit that the board's decision threatens the potency of its cell tower ordinance, enacted in 1998 to allow towers shorter than 120 feet to be built, regardless of zoning.

The county code allows cell towers to be built if they are properly camouflaged. The county's planning director is authorized to decide whether a proposed tower adheres to the code, which then-Planning Director Marvin Sowers did in early 2008. His approvals were appealed in May to the Development Review Committee by a group of Kingsmill residents.

The committee in June, and then the full Planning Commission in July, upheld the administrative approval of the proposed AT&T and Verizon towers.

More detailed than the three others, the carriers' suits include minutes from the May review committee meeting. They allege that Jack Fraley — who sits on the Planning Commission, review committee and the zoning appeals board — had a conflict of interest.

Fraley voted in favor of the towers as a member of the committee and Planning Commission. then reversed his vote as a member of the zoning appeals board.

Verizon's suit calls Fraley's roles "a multiplicity of hats that is fraught with conflicts in the present case."

The Kingsmill association alleges that felling the tower proposal deprives them of better cell service within the neighborhood.

However, another Kingsmill group — equally dismayed with the level of cell service around members' homes opposes the two-tower plan. Bill Halteman, a principal member of the Kin^gsmill Wireless Communications Advocacy Group, denied that he was a "not-in-my-backyard" type of guy. In fact, he's leading the charge against the towers, even though he won't be able to see them from his house.

"I'm against the towers, as proposed, because it's wrong," Halteman said Thursday. "We are dedicated to improving the cell reception inside Kingsmill. but it can be done without 120-foot towers."

Halteman's group disagrees with the plannin^g director's original decision to approve the towers' design to look like pines.

He insisted that they didn't comply with the definition of "camouflaged" outlined in the ordinance.

"It's one man's determination of whether it's camouflaged, and that's what we're refuting," he said.

'Camouflaged' cell towers

The James City County code defines a cell tower as "camouflaged" if it's "disguised or hidden so that all its components are unnoticeable to the casual observer or it otherwise doesn't have the appearance of an antenna or tower." To be approved, the tower must also meet one of the following criteria:

- Have the general scale and height of other permitted structures within the zoning category.
- Have the appearance of native Virginia vegetation.
- Be surrounded by 100-foot buffer of mature trees.