

Who defends Twilight Zone?

Some members threaten to resign

By Cortney Langley

JAMES CITY — The Board of Zoning Appeals called a special meeting this week to review five lawsuits tiled against it and to request an attorney of its own.

Members are reluctant to speak publicly since a decision to overturn approval for a cell tower in Kingsmill turned litigious last week. AT&T, Verizon, the Kingsmill Community Services Association, Busch Properties and James City each has filed suit challenging the ruling. At least one member of the five-person panel is expected to resign if the county supervisors refuse to cover the bill for counsel.

So far, county officials are cool to the idea because it isn't the BZA itself that is being sued — it's the BZA's *decision*. Because the BZA has quasi-judicial powers, the members don't have to defend their decision. To do so would be

akin to a judge hiring an attorney to defend a ruling that someone appealed to a higher court.

BZA members disagree, saying that in past cases where its decisions were challenged, the county attorney's office defended the board.

This time, however, the board's decision went against the county's stance.

If the county refuses legal representation, the BZA figures it won't be independent but a rubber-stamp for the county. Hence, talk of resignations.

The county administration's stance is that it has defended BZA decisions in the past, but attorneys have been representing the county's interests only, never the zoning board's.

Unfortunately, the Code of Virginia provides little guidance.

"Within the limits of funds appropriated by the governing body, the board may employ or contract



Supervisors will decide

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for... legal counsel...," the code reads. The decision rests with the supervisors.

A number of citizens asked the supes Tuesday night to withdraw the county's portion of the suit and support the BZA. James City County Citizens' Coalition founder Sarah Kadec said she was "appalled" and "horrified" by the county's stance and the possibility that the BZA would not be represented in court.

The issue is expected to dominate Friday's meeting. At first, the BZA intended to go into closed session, which is allowable under Virginia law, to confer with counsel.

Ironically, the BZA cannot meet in closed session to consider hiring an attorney because it doesn't have an attorney. The discussions will be open.

Want to go? *The BZA will meet at 6 p.m. Friday, Jan. 30, in Building F of the County Government Complex, off Mounts Bay Road.*

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