

# James City Board calls for help to defend cell tower vote

*Zoning officials ask supervisors to pay for a lawyer after a decision to kill plans for two towers ends up in court.*

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**JAMES CITY** — When a case concerning two cell towers proposed for the Kingsmill subdivision goes to court, it's still uncertain whether the board that killed those plans will be represented. That decision now stands with the Board of Supervisors.

In a specially called meeting last week, the Board of Zoning Appeals made a formal plea to the Board of Supervisors, asking for money to hire a lawyer. The board, whose members are appointed partly by the county and partly by the Circuit Court, is being sued for its decision to nix plans to build the towers. In December, the BZA voted 3-2 to overturn three previous approvals of the cell-phone towers proposal.

The meeting last Friday night was mostly conducted behind closed doors as BZA members met with John Tarley, a Williamsburg attorney who offered to consult with the board for free. At issue was whether the board should hire an attorney and who is responsible for the bill — especially since it is not the BZA, but its decision that is contested.

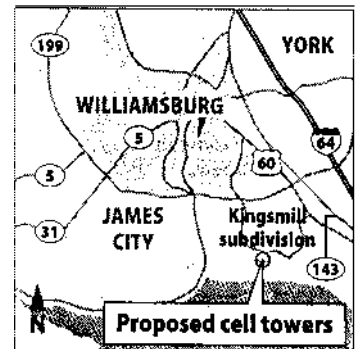
The BZA decided to form a committee that will search for an attorney to represent them if supervisors agree to pay for the service. BZA Chairman Jack Fraley, who sits also on both the Planning Commission and its Development Review Committee, has declined to comment until supervisors make a decision. Fraley voted for the cell towers twice, but reversed his vote as a member of the BZA.

With the lawsuits, essentially the court has been asked to interpret the definition of "camouflaged" in the county's zoning ordinance. According to the ordinance, cell towers less than 120 feet tall can be built anywhere in the county if they are properly disguised. In 2007, then-Planning Director Marvin Sowers decided the towers — proposed by cell carriers AT&T and Verizon Wireless — were adequately camouflaged and in accordance with the county code. The Planning Commission's Development Review Committee and then the commission agreed, but the BZA reversed those rulings.

Five groups, including the county, Busch Properties, the cell carriers and the Kingsmill Community Services Association, are asking the James City County Circuit Court to review the BZA's decision, alleging the towers' design is sufficiently "camouflaged."

Simply put, the ordinance allows cell towers that are "unnoticeable to the casual observer," recommending they be dressed up like native vegetation and set back into wooded areas where residents cannot easily view them. Kingsmill resident Dave Neiman, who initiated the appeal to the BZA, said "they just aren't going to be camouflaged, no matter how you look at it."

The site eyed for the tower is owned by Busch Properties and is a wooded strip between a cleared vacant lot and a golf course. While the towers will be dressed up to look like native pines, the thin stand is almost entirely deciduous trees with no leaves in fall or winter. The trees are also less than half as tall as the two towers would be.



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