

Zoning members hint at quitting

They want judge to require legal defense

By Cortney Langley

JAMES CITY — The Kingsmill cell towers took a predictable turn this week when the Board of Zoning Appeals asked the Circuit Court to *order* the supervisors to provide for their legal defense.

The zoning members also advised the judge that they'd like to meet with him, perhaps to quit.

All five members signed an April 6 letter to Circuit Judge Samuel Powell, which was leaked anonymously to the Gazette.

"Looking at what our options were, that's about the only option we had left," said BZA member Marvin Rhodes in a follow-up Friday. "We had no other recourse. We wanted to make the judge aware of our position."

The letter asserts that without legal representation, the members cannot adequately defend why they overturned the county's approval of twin cell towers at the Kingsmill soccer field. They asked Powell to direct the supervisors to provide public money to hire them an attorney.



The action about their appointments derives because he appointed them.

"We now question how or if we can operate in the future as an independent body without resources for independent counsel in critical cases when our decisions are challenged," the letter reads.

In December, the BZA overturned two 12-story cell towers that had been approved by the county planning director.

Then the county, AT&T, Verizon, Busch Properties and the Kingsmill Community Services Association joined in a suit against the BZA, appealing the decision.

The collective action spooked the BZA into seeking an attorney, but the supervisors balked. While taxpayers would wind up paying both sides of dueling attorneys, the rationale by the supes was that the *decision* was being *appealed* without any personal liability to the members.

If Powell denies their request for counsel, the members asked that they at least be allowed to testify in their own defense.

BZA member Jack Fraley declined comment about the letter because of the pending case. "I will say there are issues of the law, but there are also issues of right and wrong. The county government is wrong to have left the BZA hanging," Fraley said. "By denying us any counsel whatsoever in our preparation for this case, the conduct of the hearing and defense of our decision, in effect, the BZA was set up for failure."

BZA member Barbara Moody agreed.

"I feel the county has really let us down," she said. "They left us twisting in the wind with absolutely no support." Meanwhile, the leading tower opponent has filed a petition to join the suit in defense of the BZA. It was David Neiman's arguments that eventually swayed the BZA to overturn the towers in the first place.

Neiman rebutted the claims filed by AT&T, Verizon, Busch, Kingsmill and the county in his brief.

"I certainly don't have any illusions about my ability to go up against the lawyers,...." Neiman said later. "However, I feel very strongly that a good case was made that the proposed towers didn't meet county ordinances and that the BZA made the correct decision in disapproving them."